

Carli Sley
6 Porter Rd., Cambridge, MA 02140
csley@jd24.law.harvard.edu
(561) 801-1371

June 12, 2023

The Honorable Mary H. Murguia
United States Court of Appeals for the Ninth Circuit
Sandra Day O'Connor United States Courthouse
401 West Washington Street, Room 514
Phoenix, AZ 85003

Dear Judge Murguia:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

Professor Martha Minow	Professor I. Glenn Cohen	Mason Kortz
Harvard Law School	Harvard Law School	Harvard Law School
minow@law.harvard.edu	igcohen@law.harvard.edu	mkortz@law.harvard.edu
617-495-4276	617-496-2518	617-495-2845

During my time at the Law School, I have been a member of the *Harvard Journal of Law & Technology* submissions committee where I have gained valuable experience evaluating legal scholarship and conducting legal research. Additionally, as a research assistant to Professor I. Glenn Cohen I have been responsible for editing work in a forthcoming book on reproductive rights.

Thank you for your time and consideration.

Sincerely,
Carli Sley

Carli Sley
6 Porter Rd., Cambridge, MA 02140
csley@jd24.law.harvard.edu
(561) 801-1371

June 12, 2023

The Honorable Alison Nathan
U.S. Court of Appeals for the U.S. Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

Dear Judge Nathan:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing samples. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable J. Paul Oetken
United States District Court for the Southern District of New York
Thurgood Marshall United States Courthouse
40 Centre Street, Room 2101
New York, NY 10007-1501

Dear Judge Oetken:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable John B. Owens
United States Court of Appeals for the Ninth Circuit
Edward J. Schwartz United States Courthouse
221 West Broadway, Room 2193
San Diego, CA 92101

Dear Judge Owens:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable Rebecca R. Pallmeyer
United States District Court for the Northern District of Illinois
Everett McKinley Dirksen United States Courthouse
219 South Dearborn Street, Room 2548
Chicago, IL 60604

Dear Judge Pallmeyer:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable Florence Y. Pan
United States Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, N.W., Room 5700
Washington, DC 20001

Dear Judge Pan:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable Myrna Pérez
U.S. Court of Appeals for the U.S. Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

Dear Judge Pérez:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing samples. The following people have agreed to serve as references and welcome any inquiries:

Professor Martha Minow	Professor I. Glenn Cohen	Mason Kortz
Harvard Law School	Harvard Law School	Harvard Law School
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June 12, 2023

The Honorable Cornelia T. Pillard
United States Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, N.W., Room 4335
Washington, DC 20001

Dear Judge Pillard:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing samples. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable Jennifer H. Rearden
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Dear Judge Rearden:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing samples. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable Ana C. Reyes
United States District Court for the District of Columbia
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, N.W., Room 4317
Washington, DC 20001

Dear Judge Reyes:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am interested in both a one-year and two-year opportunity with your chambers. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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Thank you for your time and consideration.

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June 12, 2023

The Honorable Regina M. Rodriguez
United States District Court for the District of Colorado
Alfred A. Arraj United States Courthouse
901 19th Street, Room A738
Denver, CO 80294

Dear Judge Rodriguez:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable Gabriel P. Sanchez
United States Court of Appeals for the Ninth Circuit
James R. Browning United States Courthouse
95 Seventh Street, Room 205
San Francisco, CA 94103-1518

Dear Judge Sanchez:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable Richard G. Seeborg
United States District Court for the Northern District of California
Phillip Burton United States Courthouse
450 Golden Gate Avenue, Room 17-6534
San Francisco, CA 94102-3434

Dear Judge Seeborg:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable Manish Shah
U.S. District Court for the Northern District of Illinois
219 South Dearborn Street
Room 1978
Chicago, IL 60604

Dear Judge Shah:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable Michael P. Shea
United States District Court for the District of Connecticut
Abraham Ribicoff Federal Building and
United States Courthouse 450 Main Street, Room 623
Hartford, CT 06103-3022

Dear Judge Shea:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable Leo T. Sorokin
United States District Court for the District of Massachusetts
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 6130
Boston, MA 02210-3002

Dear Judge Sorokin:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable Srikanth Srinivasan
United States Court of Appeals for the District of Columbia Circuit
William B. Bryant United States Courthouse Annex
333 Constitution Avenue, N.W., Room 3004
Washington, DC 20001

Dear Judge Srinivasan:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable Leonard P. Stark
U.S. Court of Appeals for the U.S. Court of Appeals for the Federal Circuit
715 Madison Place, NW
Washington, DC 20439

Dear Judge Stark:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable Indira Talwani
United States District Court for the District of Massachusetts
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 4-710
Boston, MA 02210-3002

Dear Judge Talwani:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable Richard Gary Taranto
United States Court of Appeals for the Federal Circuit
Howard T. Markey National Courts Building
717 Madison Place, N.W., Suite 802
Washington, DC 20439

Dear Judge Taranto:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable Holly A. Thomas
United States Court of Appeals for the Ninth Circuit
Richard H. Chambers Court of Appeals Building
125 South Grand Avenue, Room 400
Pasadena, CA 91105-1621

Dear Judge Thomas:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable Kim M. Wardlaw
United States Court of Appeals for the Ninth Circuit
Richard H. Chambers Court of Appeals Building
125 South Grand Avenue, Suite 500
Pasadena, CA 91105-1621

Dear Judge Wardlaw:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable Derrick Kahala Watson
United States District Court for the District of Hawaii
Prince Kuhio Federal Building
300 Ala Moana Boulevard, Room C-461
Honolulu, HI 96850-0001

Dear Judge Watson:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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June 12, 2023

The Honorable Omar A. Williams
U.S. District Court for the U.S. District Court for the District of Connecticut
450 Main Street
Hartford, CT 6103

Dear Judge Williams:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

Professor Martha Minow	Professor I. Glenn Cohen	Mason Kortz
Harvard Law School	Harvard Law School	Harvard Law School
minow@law.harvard.edu	igcohen@law.harvard.edu	mkortz@law.harvard.edu
617-495-4276	617-496-2518	617-495-2845

During my time at the Law School, I have been a member of the *Harvard Journal of Law & Technology* submissions committee where I have gained valuable experience evaluating legal scholarship and conducting legal research. Additionally, as a research assistant to Professor I. Glenn Cohen I have been responsible for editing work in a forthcoming book on reproductive rights.

Thank you for your time and consideration.

Sincerely,
Carli Sley

Carli Sley
6 Porter Rd., Cambridge, MA 02140
csley@jd24.law.harvard.edu
(561) 801-1371

June 12, 2023

The Honorable Beth Robinson
United States Court of Appeals for the Second Circuit
Federal Building
11 Elmwood Avenue
Burlington, VT 05401

Dear Judge Robinson:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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(561) 801-1371

June 12, 2023

The Honorable Veronica S. Rossman
United States Court of Appeals for the Tenth Circuit
Byron White United States Courthouse
1823 Stout Street
Denver, CO 80257-1823

Dear Judge Rossman:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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Harvard Law School	Harvard Law School	Harvard Law School
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Sincerely,
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(561) 801-1371

June 12, 2023

The Honorable Lorna G. Schofield
United States District Court for the Southern District of New York
Thurgood Marshall United States Courthouse
40 Centre Street, Room 201
New York, NY 10007-1501

Dear Judge Schofield:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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Harvard Law School	Harvard Law School	Harvard Law School
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(561) 801-1371

June 12, 2023

The Honorable Andrea R. Wood
United States District Court for the Northern District of Illinois
Everett McKinley Dirksen United States Courthouse
219 South Dearborn Street, Room 1956
Chicago, IL 60604

Dear Judge Wood:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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Harvard Law School	Harvard Law School	Harvard Law School
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csley@jd24.law.harvard.edu
(561) 801-1371

June 12, 2023

The Honorable Gregory H. Woods
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 2260
New York, NY 10007-1312

Dear Judge Woods:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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6 Porter Rd., Cambridge, MA 02140
csley@jd24.law.harvard.edu
(561) 801-1371

June 12, 2023

The Honorable Bradley N. Garcia
United States Court of Appeals for the District of Columbia Circuit
William B. Bryant United States Courthouse Annex
333 Constitution Avenue, N.W., Room 3500
Washington, District of Columbia 20001 United States

Dear Judge Garcia:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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minow@law.harvard.edu
617-495-4276

Professor I. Glenn Cohen
Harvard Law School
igcohen@law.harvard.edu
617-496-2518

Mason Kortz
Harvard Law School
mkortz@law.harvard.edu
617-495-2845

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Thank you for your time and consideration.

Sincerely,
Carli Sley

Carli Sley
6 Porter Rd., Cambridge, MA 02140
csley@jd24.law.harvard.edu
(561) 801-1371

June 12, 2023

The Honorable Maria Araujo Kahn
United States Court of Appeals for the Second Circuit
Connecticut Financial Center
157 Church Street, 18th Floor
New Haven, Connecticut 06510-2100

Dear Judge Kahn:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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minow@law.harvard.edu
617-495-4276

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csley@jd24.law.harvard.edu
(561) 801-1371

June 12, 2023

The Honorable
for the

Dear Judge :

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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(561) 801-1371

June 12, 2023

The Honorable Elizabeth W. Hanes
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510-1915

Dear Judge Hanes:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am interested in a one-year position with your chambers. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

Professor Martha Minow	Professor I. Glenn Cohen	Mason Kortz
Harvard Law School	Harvard Law School	Harvard Law School
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Sincerely,
Carli Sley

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6 Porter Rd., Cambridge, MA 02140
csley@jd24.law.harvard.edu
(561) 801-1371

June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510-1915

Dear Judge Walker:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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Carli Sley

Carli Sley
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(561) 801-1371

June 12, 2023

The Honorable Anthony Johnstone
United States Court of Appeals for the Ninth Circuit
Russell E. Smith Federal Building
201 East Broadway Street
Missoula, Montana 59802 United States

Dear Judge Johnstone:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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(561) 801-1371

June 12, 2023

The Honorable J Michelle Childs
United States Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, N.W.
Washington, DC 20001

Dear Judge Childs:

I am writing to apply for your next available clerkship position after I graduate in 2024. I am a rising third-year student at Harvard Law School. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will be receiving separately letters of recommendation from the following people:

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Thank you for your time and consideration.

Sincerely,
Carli Sley

CARLI SLEY

6 Porter Road, Apt 2R, Cambridge, MA 02140 • csley@jd24.law.harvard.edu • (561) 801-1371

EDUCATION**Harvard Law School, Cambridge, MA**

Candidate for J.D., May 2024

Honors: Dean's Scholar Prizes in Property, Constitutional Law, and Evidence

Activities: *Harvard Journal of Law & Technology*, Submissions Committee
 Women's Law Association, Women in Washington Committee
 Harvard Law Entrepreneurship Project

University of Florida, Gainesville, FL

B.S., *cum laude* in Biomedical Engineering, Minor in Communication Studies, May 2021

Honors: Tau Beta Pi (Engineering Honor Society)
 University of Florida Honors College

Activities: Dance Marathon at UF, Assistant Director of Student Organizations
 Engineers Week at UF, Assistant Director of E-Fair
 NeuroProstheses Research Lab, Undergraduate Research Assistant

Capstone: Inflatable Liner for Residual Volume Management (Developed cost-effective prototype to address residual limb volume fluctuations in recent amputees to better quality of life)

Study Abroad: Florence University of the Arts, Florence, Italy, May-July 2018 (coursework in Italian culture)

EXPERIENCE**Covington & Burling LLP, Washington, DC**

Summer Associate, May 2023-Present

- Draft an op-ed on the relationship between STEM education and global economics.
- Analyze state and federal laws pertaining to animal testing for the cosmetics industry.

Berkman Klein Center for Internet & Society, Cambridge, MA

Communications Team Research Assistant, Dec. 2022-Present

- Collaborate with the communications team to present the work of the Center's affiliates to the general public.
- Generate copy for and curate a weekly newsletter for an audience of over 10,000.

Harvard Law School, Cambridge, MA

Research Assistant to Professor I. Glenn Cohen, Mar. 2022-Present

- Conducted research and cite checking for a forthcoming work on reproductive rights.

Harvard Law School, Cambridge, MA

Teaching Fellow for Civil Procedure, Professor Jessica Clarke, Aug. 2022-Dec. 2022

- Hosted weekly office hours to assist first year law students with Civil Procedure and study methods.
- Collaborated with Professor Clarke and the other teaching fellows to provide resources for the first-year students.

Cyberlaw Clinic at the Berkman Klein Center for Internet & Society, Cambridge, MA

Student Attorney, Sep. 2022-Jan. 2023

- Researched, drafted, and finalized an amicus brief for the Supreme Judicial Court of Massachusetts on the increased threat of data brokers in the criminal justice space.
- Strategized on negotiation approaches to achieve the most favorable outcome for clients.

Irell & Manella LLP, Los Angeles, CA

Summer Associate, May 2022-July 2022

- Researched and drafted a memorandum on inequitable conduct, as well as a report on convoyed sales.
- Prepared a presentation on the use of rap lyrics in criminal trials for lunch and learn.
- Conducted a search for prior art and incorporated findings into a claim chart.

Into Prep, Upper Darby, PA

SAT Tutor, June-Aug. 2021

- Created and implemented SAT math lesson plans to engage 15 high school students over Zoom.
- Tracked academic performance of and adjusted material for each student.

INTERESTS

Ina Garten's cookbooks, reading humor essays, and spinning.

Harvard Law School

Date of Issue: June 7, 2023

Not valid unless signed and sealed

Page 1 / 2

Record of: Carli Megan Sley
Current Program Status: JD Candidate
Pro Bono Requirement Complete

JD Program				2079	Evidence	H*	2
Fall 2021 Term: September 01 - December 03					Rubin, Peter		
1000	Civil Procedure 4	H	4	2672	Fairness and Privacy: Perspectives of Law and Probability	H	2
	Cohen, I. Glenn				Minow, Martha		
1001	Contracts 4	P	4	3202	The United States Supreme Court	H	2
	Elhauge, Einer				Sunstein, Cass		
1006	First Year Legal Research and Writing 4B	H	2		Fall 2022 Total Credits:		11
	Petrucci, Caley				Winter 2023 Term: January 01 - January 31		
1004	Property 4	H*	4	8004C	Cyberlaw Clinic - Advanced Clinical	H	2
	Singer, Joseph				Bavitz, Christopher		
	* Dean's Scholar Prize				Winter 2023 Total Credits:		2
1005	Torts 4	P	4		Spring 2023 Term: February 01 - May 31		
	Lazarus, Richard				Administrative Law	P	3
	Fall 2021 Total Credits:		18	2000	Sunstein, Cass		
Winter 2022 Term: January 04 - January 21					Constitutional History II: From Reconstruction to the Civil Rights Movement	P	3
1057	Financial Accounting and Valuation	CR	2	2453	Klarman, Michael		
	Coates, John				International Business Law	H	4
	Winter 2022 Total Credits:		2	2560	Wu, Mark		
Spring 2022 Term: February 01 - May 13					The Law of Presidential Elections	H	2
1024	Constitutional Law 4	H*	4	3213	Schwartzol, Larry		
	Minow, Martha				Spring 2023 Total Credits:		12
	* Dean's Scholar Prize				Total 2022-2023 Credits:		25
1002	Criminal Law 4	H	4		Fall 2023 Term: August 30 - December 15		
	Crespo, Andrew				Advanced Written Advocacy	~	2
1006	First Year Legal Research and Writing 4B	H	2	3187	Clary, Richard		
	Petrucci, Caley				Federal Courts and the Federal System	~	5
1003	Legislation and Regulation 4	P	4	2086	Goldsmith, Jack		
	Renan, Daphna				Privacy Law	~	4
2189	Music and Digital Media	H	2	3241	Nielsen, Aileen		
	Bavitz, Christopher				Fall 2023 Total Credits:		11
	Spring 2022 Total Credits:		16		Spring 2024 Term: January 22 - May 10		
	Total 2021-2022 Credits:		36		Constitutional Law: First Amendment	~	4
Fall 2022 Term: September 01 - December 31				2035	Field, Martha		
8004	Cyberlaw Clinic	H	3		Democracy and the Rule of Law Clinic	~	3
	Bavitz, Christopher			8049	Schwartzol, Larry		
2674	Cyberlaw Clinic Seminar	P	2				
	Bavitz, Christopher						

continued on next page

Harvard Law School

Record of: Carli Megan Sley

Date of Issue: June 7, 2023

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Page 2 / 2

2169	Legal Profession: Complex Litigation	~	2
	Rubenstein, William		
2994	Legal Tools for Protecting Democracy and the Rule of Law in America	~	2
	Schwartzol, Larry		
	Spring 2024 Total Credits:		11
	Total 2023-2024 Credits:		22
	Total JD Program Credits:		83
End of official record			

HARVARD LAW SCHOOL
 Office of the Registrar
 1585 Massachusetts Avenue
 Cambridge, Massachusetts 02138
 (617) 495-4612
www.law.harvard.edu
registrar@law.harvard.edu

Transcript questions should be referred to the Registrar.

~~~~~  
**In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.**  
 ~~~~~

A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor)
 LL.M. (Master of Laws)
 S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

May 2011 - Present

<i>Summa cum laude</i>	To a student who achieves a prescribed average as described in the <u>Handbook of Academic Policies</u> or to the top student in the class
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipient(s)
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems

Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67 (B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

<u>1969 to June 1998</u>	<u>General Average</u>
<i>Summa cum laude</i>	7.20 and above
<i>Magna cum laude</i>	5.80 to 7.199
<i>Cum laude</i>	4.85 to 5.799

June 1999 to May 2010

<i>Summa cum laude</i>	General Average of 7.20 and above (exception: <i>summa cum laude</i> for Class of 2010 awarded to top 1% of class)
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipients
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

Prior Degrees and Certificates

LL.B. (Bachelor of Laws) awarded prior to 1969.

The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).

Mason A. Kortz
Cyberlaw Clinic
Harvard Law School
1557 Massachusetts Ave. 4th Floor
Cambridge, MA 02139
tel: 617-495-2845
cell: 858-922-1990
email: mkortz@law.harvard.edu

June 13, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker,

I am writing in support of Carli Sley's application for the position of law clerk in your chambers. Carli participated in the Cyberlaw Clinic at Harvard Law School in the Fall of 2022 and the Winter of 2023. As Carli's direct supervisor, I worked closely with her on her projects. As such, I had the opportunity to observe Carli's lawyering firsthand. She excelled in her time at the Clinic, as she would no doubt excel as your clerk.

During the Spring 2022 academic term, Carli worked with me on two projects. The first involved advising an archivist on intellectual property risks associated with organizing an exhibit on the history of the U.S. war in Iraq. The second involved researching and developing arguments for an amicus brief on automatic sealing of criminal records ending in acquittal. The amicus brief project continued into the Winter 2023 term, where Carli was the lead drafter on the brief.

Both of Carli's projects involved significant legal research and writing—the first in the form of client-facing memo, and the second in the form of an amicus brief that was filed in January 2023 with the Supreme Judicial Court of Massachusetts. In her work, Carli had the opportunity to research case law, legislative history, and various secondary sources. Not only did she quickly and accurately locate the necessary resources, she also displayed an excellent ability to synthesize multiple sources and provide a coherent legal analysis. Her contributions to both projects were invaluable.

In addition to Carli's strong research and writing skills, she displayed a high degree of professionalism throughout her time at the Clinic. Both of Carli's projects were conducted in teams, and she proved to be an integral to both, as her communication skills allowed her to take on a coordinating role in both teams. Carli was always well-prepared for client, team, and supervisor meetings. In conversations with clients and cooperating counsel, she asked insightful questions. I was particularly impressed with her work ethic—during the final week before filing the amicus brief, she worked diligently to turn around edits to the client and co-counsel quickly but without sacrificing quality.

As a former Federal District Court law clerk myself, I have some sense of the skills required to thrive in chambers. I can say without exaggeration that Carli demonstrated all of these skills during her time with the Cyberlaw Clinic. She is an experienced legal researcher and capable of writing in multiple styles. She is a good communicator and built a strong rapport with her teammates and clients. Finally, she has a great work ethic and is dedicated to her projects.

In short, I believe that Carli would be an excellent addition to your chambers. Please do not hesitate to contact me if you have any questions about her time at the Cyberlaw Clinic.

Sincerely,

Mason A. Kortz
Clinical Instructor
Harvard Cyberlaw Clinic

Mason Kortz - mkortz@law.harvard.edu

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is a pleasure to recommend Carli Sley who is applying to serve as your law clerk. She has been a truly excellent student in two classes with me as well as in many other courses. Developing a real expertise in legal treatments of technology, she has fine experiences as a research assistant and as a law review editor.

Her final exam was one of the handful at the very top of my 80-person Constitutional Law course. I require each student in the class to participate in an in-class moot court or legislative debate and to submit in advance a summary of key arguments. She showed both great preparation and an ability to think on her feet. She later explained that the experiences helped her develop greater confidence in dealing with unresolved issues, complementing her rigorous analytical training in biomedical engineering before law school.

Her further work in my course on Fairness and Privacy demonstrated her real expertise in emerging issues involving digital technologies. There she contributed to class discussions and also wrote two papers. Carli was very responsive to feedback and again excelled in the course. I was pleased to learn that the course has helped with her job compiling the weekly newsletter for our center on internet and society and for examining contrasting viewpoints and works of scholarship.

Carli's summer work for law firms has involved a wide range of fields including patent litigation, copyright advising, employment law, and public policy initiatives relating to promoting diversity in technology industries. As a research assistant, she has undertaken significant responsibilities including editing drafts and organizing complex materials.

Personally, Carli is unpretentious and kind. I am confident she would be a real asset in your chambers and someone on whom you can really count.

Sincerely,

Martha Minow
300th Anniversary University Professor
Former Dean
Harvard Law School

Martha Minow - minow@law.harvard.edu - 617-495-4276

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to you to give Carli Sley, a soon-to-be 3L student at Harvard Law School and a submissions editor at the Harvard Journal of Law and Technology, my strong recommendation for a clerkship in your chambers. Carli did very well in my first-year Civil Procedure course and has been a research assistant for me during her 2L year. Because I have worked with her closely, and seen a considerable amount of her work product, I can confidently tell you that she would make an excellent clerk for your chambers.

First, let me say a word about Carli's performance in Civil Procedure. It is a fairly large class (roughly 80 students) in the first semester of the first year, and it is a testament to the kind of outstanding student Carli is that even in our 80-person first-year course, her great abilities stood out. At Harvard we have made (in my mind) the unfortunate curricular decision to do the entirety of Civil Procedure in four credit hours in one semester, which means that my course operates at an extremely swift pace with a very intense workload. Notwithstanding the rigorous demands, Carli was always at the top of her game. I remember a particularly good exchange with Carli in class on the difference between the constitutional limits of federal question subject matter jurisdiction and what authority Congress has granted the federal courts, perennially a difficult issue for first-year students, where Carli's intellect particularly shone. It was no surprise she received an honors grade in the course.

I was so impressed with Carli in the class and during office hours that I was delighted to take her on as a research assistant. In that capacity, she has helped me with a book chapter on the constitutional and bioethical treatment of reproductive technologies that involve embryo destruction in the wake of the U.S. Supreme Court's decision in *Dobbs v. Jackson Health Organization*. Not only did the assignment require Carli to edit prose concerning a topic on which she had no prior background, but as part of her assignment, I asked her to help me fill in a few areas of research and write them up within the draft. She did an excellent job on a very quick timeline, and since this assignment is the kind of task I give students that most approaches the tasks given to the typical law clerk, I think it is very promising for her ability to excel in your chambers.

Finally, let me say something about Carli's character. She is a true renaissance woman who loves not only the wetlab work of biomedical engineering, including building human prosthetics in her undergraduate studies, but also loves cooking and reading novels. Like many who excel in the sciences, she is able to break down any problem, no matter how complex, into its constituent parts and solve it, but she is also an excellent writer and someone who can live "in the gray," where so much legal doctrine seems to live. She is hard-working but a delight to be around, and I suspect you will really enjoy having her in chambers.

This is a young woman who has much to give to the world, and I hope that under your mentorship, she can begin doing so. My own clerkship was instrumental to my career, not only in terms of the mentorship and the improvement of my writing I received from my judge, but in building a life-long friendship that has followed me to every job I have pursued after law school. I think it is reasonable, then, for a judge to ask what this applicant will look like five or ten years from now if she gets a spot in your chambers. I think with Carli, the possibilities are quite exciting. Given her intellectual interests, I can easily see her taking a leading role as a partner on intellectual property or FDA law litigation at a major firm. I cannot tell you exactly where her career will take her, but I am confident that when she returns for her tenth-year reunion, it will be a career of which she, and less importantly I, will be very proud.

In sum, as someone who clerked myself and then spent time as a litigator while at the Justice Department, I have a sense of the kind of person a judge can rely on as an outstanding clerk. I think Carli would make an excellent clerk for your chambers and give her my strong recommendation. I would be happy to answer any more questions you might have about her.

Sincerely Yours,

I. Glenn Cohen

I. Glenn Cohen - igcohen@law.harvard.edu - 617-496-2518

CARLI SLEY

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**WRITING SAMPLE
DRAFTED SPRING 2023**

An Evaluation of the Electoral Count Reform Act

I. Introduction

On December 29, 2022, President Biden signed an omnibus spending bill which contained the Electoral Count Reform and Presidential Transition Improvement Act of 2022¹ into law. The first portion of the Act, more commonly referred to as the Electoral Count Reform Act or ECRA, is a bipartisan effort to protect Presidential Elections from manipulation.² It overhauled the 1887 Electoral Count Act (“ECA”), which along with Article II and the Twelfth Amendment, comprised much of the federal scaffolding of Presidential Elections Law for the past hundred-plus years.³

The ECA arose in-part out of a desire to address major gaps in the constitutional structure governing presidential elections exposed by the election of 1876.⁴ It was never a perfect framework. Instead, it was an attempt to create a process for adjudicating conflicting slates, to minimize the potential for state-level manipulation of the count and of the election process, and to clear up ambiguities regarding the transmission of electors to Congress.⁵ The ECA played a crucial role in the presidential election law landscape from enactment through the 2020 Presidential Election. The 2020 Presidential Election exposed multiple holes and imperfections in the ECA which, although previously critiqued, had never been challenged to the degree that they were in the lead up to inauguration day 2021.⁶ Following the conclusion of the 2020 election, Congress drafted the ECRA to address weaknesses in the Presidential Election framework that were exposed.

The ECRA is a substantial improvement over the archaic ECA, but it is nonetheless an imperfect framework. As will be detailed in Sections II-IV of this paper, the ECRA makes it substantially more

¹ Electoral Count Reform and Presidential Transition Improvement Act of 2022.

² Mary Clare Jalonick, *How Congress is Changing Electoral Law in Response to Jan. 6*, AP (Dec. 20, 2022), <https://apnews.com/article/donald-trump-susan-collins-west-virginia-c9c15562ad910bbc0ba6ef1eebfc158>.

³ *Id.*

⁴ See e.g., Stephen A. Siegel, *The Conscientious Congressman’s Guide to the Electoral Count Act of 1887*, 56 FLA. L. REV. 541 (2004) (explaining how Congress reflected on “its twenty-five previous electoral counts” including “the disastrous presidential election of 1876” before enacting the ECA which “invites misinterpretation” and “is turgid and repetitious”).

⁵ See 5 U.S.C. §§1-2, 5-7, 15-17 (2018) (amended 2022).

⁶ See Siegel *supra* note 4.

difficult to subvert the will of the people. It achieves this by re-working many of the ECA's exploitable provisions. However, the ECRA is not foolproof; there are still avenues for bad actors to exploit remaining ambiguities. Therefore, the ECRA should certainly be applauded for addressing key holes in the ECA, but it should not be seen as infallible. Additional improvements to the ECRA could be made to best protect Presidential Elections in the United States.

This essay will outline key provisions of the ECRA, highlighting both areas which massively improve the previous Presidential Election scaffolding and areas where ambiguities that could be exploited remain.⁷ In Sections II-IV, important provisions of the ECRA are detailed. The essay groups key points based upon where in the chronology of a Presidential Election they come into play. The section that follows will be focused on Election Day and state certification of electors. The next will cover the judicial review process outlined in the ECRA. That section is followed by a discussion of the provisions relating to Congress's counting of the votes, including the Vice President's role on that day. Finally, the conclusion will offer reflections on the ECRA and suggested spaces for improvement.

II. Elections and the Certification of Electors

A. Defining the Executive

Potentially the simplest, but nonetheless crucial, change from the ECA to the ECRA is a simple definition. Under the ECA, a state's executive was tasked with communicating the state's electors to Congress, however, the ECA provided no definition for a state's executive.⁸ The ECRA, in contrast, makes explicit that the "executive" of a state is:

the Governor of the State (or, in the case of the District of Columbia, the Mayor of the District of Columbia), except when the laws or constitution of a State in effect as of

⁷ A preliminary note: The ECA's constitutionality has previously been questioned. *See generally* Vasan Kesavan, *Is the Electoral Count Act Unconstitutional*, 80 C. L. Rev. 1653 (2002). Similar questions and critiques could be extended to the ECRA. This essay will not address such issues.

⁸ 3 U.S.C. §6 (2018) (amended 2022).

election day expressly require a different State executive to perform the duties identified under this chapter.⁹

This addition to the framework is critical. The lack of a definition in the ECA left open the possibility that different state executives (e.g., the Governor, the Secretary of State, a State's AG) could each claim responsibility for certifying the electors.¹⁰ Thus it was possible that competing slates of electors, multiple of which were signed by an individual who had a reasonable basis to claim to be a state's executive, could be submitted to Congress.

Since the ECA tasked Congress with determining the appropriate slate of electors if multiple slates were transmitted, the potentially outcome determinative process of choosing which slate to count would occur only weeks before inauguration, during the Joint Session.¹¹ For those who are keen to believe that political actors would have unavoidable biases and should not be trusted with such a politically-charged and important task, the ECA's delegation of choosing authority to Congress was a highly problematic provision. For others, Congress's status as a political body is exactly why Congress is the right actor for such a task.¹² Regardless of which side of the institutional competencies debate one is on, the ECA's decision rules for a Congress divided on which slate was proper were a "monstrosity," a "virtually impenetrable maze."¹³ Further, the possibility that the President and Vice President-Elect would not be confirmed until months after the Election is potentially destabilizing. Thus, whether or not Congress was the best actor for the job, the decision-making process was not ideal. The ECRA's new definition eliminates the possibility that executive-certified dueling slates be submitted to Congress.¹⁴

⁹ 3 U.S.C. §5 (2023).

¹⁰ See 3 U.S.C. §6 (2018) (amended 2022).

¹¹ See 3 U.S.C. §15 (2018) (amended 2022).

¹² *Bush v. Gore*, 539 US 98, 155 (2000) (Breyer, J., dissenting) ("Congress, being a political body, expresses the people's will far more accurately than does an unelected Court. And the people's will is what elections are about.").

¹³ Edward B. Foley, *Preparing for a Disputed Presidential Election: An Exercise in Election Risk Assessment and Management*, 51 LOY. U. CHI. L. J. 309, 329 (2020).

¹⁴ Of course, nothing could stop a set of electors and a willing non-Governor in the state's executive (or Governor in a state in which the Governor is not tasked with the certification process) from submitting a slate to Congress. Under the ECRA, though, this slate would not matter as the one by the appropriate executive is "conclusive." 3 U.S.C. §5 (2023).

For future Presidential Elections, there is a defined executive for the purposes of certification and that executive's certification shall be treated as "conclusive" by Congress.¹⁵

B. From Failed to Choose to Force Majeure

The ECRA also eliminated the language in the ECA which authorized electors to be "appointed on a subsequent day in such a manner as the legislature of such State may direct" if a State "failed to make a choice" on election day.¹⁶ This provision, particularly the failure to make a choice language, was too vague, allowing expansive arguments for what could constitute an election failure.¹⁷ Such vagueness invited misconduct and was a central element of the efforts to overturn the 2020 election.¹⁸

The ECRA replaces this with an "election day" which may include a "modified period of voting" if "necessitated by force majeure events that are extraordinary and catastrophic, as provided under the laws of the State enacted prior to" election day.¹⁹ This improved language has two key benefits: first, the set of circumstances which would necessitate modified procedures is partially clarified; second, if such a circumstance arises, the ECRA authorizes a modified period of voting as opposed to the more open-ended grant to state legislatures to appoint electors themselves after Election Day.

¹⁵ 3 U.S.C. §5 (2023). As will be discussed in subsection B, a certification by the executive which is then ordered to be revised by a court will be superseded by the certificate "required to be issued or revised" by the court. *Id.*

¹⁶ 3 U.S.C. §2 (2018) (amended 2022).

¹⁷ See Richard L. Hasen, *Identifying and Minimizing The Risk of Election Subversion and Stolen Elections in The Contemporary United States*, 135 HARV. L. REV. F. 265, 272-75 (2022). Although vague, many elector scholars agree "it is clear from the structure of 3 U.S.C. §§ 1 and 2, that delays in a state's completion of its vote tally or in resolving related disputes do not amount to a 'failure to make a choice.'"; *A State Legislature Cannot Appoint Its Preferred Slate of Electors to Override the Will of the People After the Election*, NATIONAL TASK FORCE ON ELECTION CRISES, https://static1.squarespace.com/static/5e70e52c7c72720ed714313f/t/5f625c790cef066e940ea42d/1600281722253/State_Legislature_Paper.pdf (citing Joshua A. Douglas, *Procedural Fairness in Election Contests*, 88 IND. L. J. 1, 29-34 (2013)).

¹⁸ Hasen *supra* note 17 (describing Trump's endgame as: "(1) to get state legislatures to rely on purported evidence of fraud or other irregularities to declare alternative slates of presidential electors, despite a lack of legal authority to do so; (2) to argue that the ECA, which governs the counting of Electoral College votes, permitted Congress to consider these alternative slates of electors because the irregularities constituted a 'failed' election under the Act or that portions of the ECA limiting the discretion of Congress to count legislatively submitted alternative slates of electors were unconstitutional; and (3) either to get Vice President Pence to delay the counting of Electoral College votes until enough states could declare alternative slates of electors (or simply declare President Trump the winner), or alternatively, to prevent President Biden from obtaining a majority of Electoral College votes, triggering a procedure for choosing the President via votes by each state's House of Representatives delegation, which would have favored President Trump.") (internal citations omitted).

¹⁹ 3 U.S.C. §1 (2023).

First, the ECRA nixed the “failed” election provision in favor of language which provides that modification of the election day is appropriate when there are “force majeure events that are extraordinary and catastrophic.”²⁰ This narrows the set of circumstances under which a state could call for modification of the election day. While one interpretation of “failed” would be essentially the same as “force majeure events that are extraordinary and catastrophic,” the greater specificity of the ECRA reduces opportunities to advocate for more expansive readings. This is particularly true because of the addition of “force majeure” which reinforces that the event must be truly extraordinary and unforeseen.²¹ This language, however, is not without some room for abuse. As opposed to the draft bill by Senators King and Klobuchar,²² which enumerated specific events that would trigger the modified election period, the enacted approach is more federalism focused. It leaves the determination of such “extraordinary and catastrophic” events up to the states. Consequently, even with the force majeure addition, there is still some space for states to make more sweeping determinations of what constitutes such an event which could invite mischief.

Additionally, the new procedure that follows an “extraordinary and catastrophic” event reduces the likelihood that a state could use that event in order to appoint a new slate of electors. This is so because, under the ECRA, the remedy for an “extraordinary and catastrophic” event which derailed the election is to modify the voting period. In effect, the state could authorize voting past election day if necessary.²³ It does not, however, allow the state to deem the election “failed” and then give the legislature the ability to appoint the state’s electors.²⁴ Thus, while this provision could have been drafted

²⁰ *Id.*

²¹ See *force majeure*, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/force_majeure (“[F]orce majeure events are often labeled as “acts of god” and include both natural and man-made events like fires, floods, storms, war, and labor disputes.”). This language was not included in earlier versions of the bill, but multiple election scholars and pro-democracy groups testified before Congress that the addition of the language would be useful in clarifying the provision. *D21 Urges Senate To Make Important Changes To Electoral Count Reform Act To Ensure It Can Effectively Prevent Future Efforts To Steal The Presidency*, D21 (Aug. 2, 2022), <https://democracy21.org/news-press/press-releases/d21-urges-senate-to-make-important-changes-to-electoral-count-reform-act-to-ensure-it-can-effectively-prevent-future-efforts-to-steal-the-presidency>.

²² Senators King, Klobuchar, and Durbin “Discussion Draft to Modernize the Electoral Count Act” (Feb. 1, 2022).

²³ 3 U.S.C. §1 (2023).

²⁴ Compare 3 U.S.C. §1 (2023) with 3 U.S.C. §2 (2018) (amended 2022).

in a clearer manner, the paramount worry stemming from the ECA's similar provision has significantly reduced.

C. Reaffirmation of the Bindingness of Pre-Election Laws

Finally, the ECRA maintained the ECA's mandate that electors "shall be appointed ... in accordance with the laws enacted prior to election day."²⁵ This language works in tandem with the language discussed in the preceding subsections to substantially reduce the possibility of state officials subverting the will of the people by submitting a slate which is contrary to the state's election results. It achieves this by mandating that laws may not be changed post-election as a means to change the result.²⁶ Of course the possibility that actors may ignore the clear language of the ECRA is always open. Accordingly, the reviewability of state actions relating to the certification of the electors is incredibly important for ensuring that the election officials act in a democracy-oriented manner.

III. Judicial Review

Some form of judicial review of the certification of electors is clearly contemplated by the ECRA. The Act instructs that "any certificate of ascertainment of appointment of electors required to be issued or revised by any State or Federal judicial relief granted prior to the date of the meeting of electors shall replace and supersede any other certificates submitted."²⁷ Thus, in the event that a state executive fails to abide by section (a)(1), which provides basic instructions for certification, a court's instruction to remedy the slate is treated as conclusive in Congress, not the original slate. For this provision to provide effective oversight however, aggrieved parties must be able to get in court. While the intent of the judicial review section appears to be that aggrieved candidates for President and Vice President will have their day in court, ambiguities in the wording of the judicial review section exist which could complicate this.

²⁵ 3 U.S.C. §1 (2023).

²⁶ *See id.*

²⁷ 3 U.S.C. §5 (2023).

There are two main situations in which judicial review would be of the utmost importance: (1) if a state executive issues a rogue certificate (i.e., a certificate which is counter to the “laws of such State” or more simply, a certificate proclaiming a winner that did not win according to the state’s rules pre-election day); and (2) if a state executive refuses to issue any certificate and there are fewer than six days before the meeting of the electors. Both are clear violations of section (a)(1), which provides the following:

Not later than the date that is 6 days before the time fixed for the meeting of the electors, the executive of each State shall issue a certificate of ascertainment of appointment of electors, under and in pursuance of the laws of such State providing for such appointment and ascertainment enacted prior to election day.²⁸

Thus, either action (or, more accurately, inaction in the case of hypothetical 2) would implicate the expedited procedures outlined in section (d) “Venue and Expedited Procedure.”²⁹ Yet, the procedures for judicial review outlined by that section contain no express cause of action. Instead, the subsection is concluded with the statement that it “shall be construed *solely* to establish venue and expedited procedures.”³⁰ Thus, it is possible that a violation of the ECRA will go unreviewed.

This worry may be overstated. For one, the subsection instructs that it “shall not be construed to preempt or displace any existing State or Federal cause of action.”³¹ Thus, violations of state or federal law would not escape review. Such actions may be a violation of the equal protection or due process clause of the Fourteenth Amendment and/or a state’s specific election laws. So, it is entirely possible that even without an express cause of action tied to the ECRA, an executive’s action in violation of the ECRA would be reviewable as a violation of either state election or federal law.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* (emphasis added).

³¹ *Id.*

Additionally, it is also possible that a court would find an implied cause of action based upon the notion that Congress is a rational actor and would not ordinarily institute legislation that is unenforceable. However, this possibility may be derailed by the language which asserts that the judicial review section “shall be construed solely to establish venue and expedited procedures.”³²

The lack of an express cause of action is also concerning due to various judicial avoidance doctrines. Avoidance doctrines, which would potentially allow a court to escape the responsibility of reviewing rogue actions, have been advocated for previously. Consider, for instance, Professor Edward Foley’s theory of federal court’s review of election law disputes: “vote-counting litigation in a presidential election warrants its own special form of an ‘abstention’ doctrine, or at least yields the conclusion that traditional abstention doctrines as applied to this context calls upon federal district courts to abstain rather than getting involved.”³³ This concept of abstention is neither novel nor fringe consequently it is not unforeseeable a panel of judges would sign on to such a theory and leave a rogue governor’s actions unchecked.

If the reviewing court were to decline to get involved Congress would be in a tough situation. Since the ECRA foreclosed the possibility of dueling slates and an executive’s slate is conclusive unless superseded by a court decision, Congress would be left with the potentially unjust slate. Following the ECRA lawmakers could object to the slate, arguing that the electors were not “lawfully certified” but the remedy in the event that the objection was upheld would be to not count that slate, not to replace it with another slate.³⁴ Depending on how close the election was, this could result either in a contingent election or the election being called for the candidate who did not rightfully win. Either situation would likely take a serious toll on the legitimacy of the Presidency and the Presidential Elections process.

³² *Id.*

³³ Edward Foley, *Why Counting Presidential Votes is Not for Federal District Courts*, SCOTUSblog.com (Nov. 16, 2020), <https://www.scotusblog.com/2020/11/why-counting-presidential-votes-is-not-for-federal-district-courts/>.

³⁴ See 3 U.S.C. §15 (2023).

Given that the ECRA contemplates a role for judges and blocks Congress from choosing between dueling slates of electors, it is imperative that disputes over the certification of a state's electors be heard in court. While it is entirely possible that an extant cause of action would allow for the resolution of such disputes, the chance that such a cause of action does not exist or that a panel of judges invoke some notion of avoidance is enough to warrant calls for an amendment to the ECRA which explicitly announces a cause of action.

IV. Congress's Counting of the Votes

The ECRA significantly improves the framework relating to Congress's vote counting process. This was achieved through one major change and one clarification, both of which are directly responsive to the events on and leading up to January 6, 2020. However, this part of the process has not been fully safeguarded from rogue actions. The choice to retain the ECA's vague language relating to what constitutes an appropriate objection is an issue for the ECRA.

A. An Increased Objection Threshold

First, the change. The previous requirement to lodge an objection and move it to a debate was that one member of the House and one Senator sign onto the objection.³⁵ The ECRA substantially increases the requirement such that $\frac{1}{5}$ of each chamber must object in order to move the objection to debate and then a vote.³⁶ This is a substantial improvement as the previous threshold made it too easy for fringe objections to derail the process: only two individuals, granted they serve in different chambers, were necessary to force the Senate to withdraw from the Joint Session so that both chambers can independently discuss and vote on the objection.³⁷ At the same time, keeping the threshold under $\frac{1}{2}$ still allows for debates if circumstances where there is a genuine dispute were to arise.³⁸ Whether $\frac{1}{5}$ is the sweet spot where all wildly unsubstantiated and inappropriate objections are weeded out while

³⁵ 3 U.S.C. §15 (2018) (amended 2022)

³⁶ 3 U.S.C. §15 (2023).

³⁷ *See id.*

³⁸ *See id.*

protecting the ability for all legitimate disputes to proceed to debate is unclear. But it is certainly an improvement.

B. Retention of “Lawfully Certified” and Regularly Given”

While the objection threshold was significantly altered, the grounds for objection were retained with practically no further clarification on their meaning. Under the ECRA, like the ECA before it, an objection may be made that “[t]he electors of the State were not lawfully certified under a certificate of ascertainment of appointment of electors according to section 5(a)(1)” or that “[t]he vote of one or more electors has not been regularly given.”³⁹

This can potentially pose an issue as members of Congress may disagree over what the appropriate grounds for objection are and thus objections which are outside the realm of either ground may continue to be made. Nonetheless, the new, increased threshold should provide some assistance here: while the retained ambiguity might make it easier for a member of Congress to claim they have an objection, the heightened threshold will still make it more difficult for any objection – ranging from completely outside the scope to arguably within the scope – to proceed to debate. Thus, even without a much-needed definition for “regularly given” the ability for lawmakers to derail the Joint Session has been significantly decreased.

C. Clarification on the Ministerial Nature of the Vice President’s Role

Finally, the ECRA clarifies that the Vice President’s role in this process is purely ministerial. The ECRA specifies that “the role of the President of the Senate [ordinarily the Vice President] while presiding over the joint session shall be limited to performing solely ministerial duties.” Additionally, the ECRA announces in no uncertain terms that “[t]he President of the Senate shall have no power to solely determine, accept, reject, or otherwise adjudicate or resolve disputes over the proper certificate of ascertainment of appointment of electors, the validity of electors, or the votes of electors.”⁴⁰ Thus, the

³⁹ *Id.*

⁴⁰ *Id.*

argument that the Vice President is the “ultimate arbiter” and can unilaterally intervene and declare one candidate the winner is foreclosed by the ECRA.⁴¹

V. Conclusion

The ECRA represents a bipartisan effort to protect the U.S.’s Presidential Elections from mischief, rogue actors, and general demagoguery. It is a substantial improvement over the ECA, whose significant holes were exposed and exploited during the 2020 Presidential Election. Nonetheless, it is imperfect: it does not completely foreclose the possibility that a state will adopt a more-expansive definition of “extraordinary and catastrophic” than Congress intended; it fails to make absolute certain that mischief relating to the certification of electors will receive judicial review; and it provides no further guidance as to what constitutes a valid objection. Whether these shortcomings will be exploited during future elections remains to be seen. Future Congresses should be aware of these weaknesses and consider amending the relevant provisions to strengthen them before a specific disaster necessitates it.

⁴¹ Jamie Gangel & Jeremy Herb, *Memo Shows Trump Lawyer’s Six-Step Plan for Pence to Overturn the Election*, CNN (Sept. 21, 2021, 5:39 PM), <https://www.cnn.com/2021/09/20/politics/trump-pence-election-memo> (explaining Donald J. Trump’s plan to have Vice President Mike Pence use his role as Senate President, as defined by the Constitution and the ECA, to call the Election for Trump).

Applicant Details

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Address	<table><tbody><tr><td>Address</td></tr><tr><td>Street</td></tr><tr><td>203 Myers St. Apt A</td></tr><tr><td>City</td></tr><tr><td>Lexington</td></tr><tr><td>State/Territory</td></tr><tr><td>Virginia</td></tr><tr><td>Zip</td></tr><tr><td>24450</td></tr><tr><td>Country</td></tr><tr><td>United States</td></tr></tbody></table>	Address	Street	203 Myers St. Apt A	City	Lexington	State/Territory	Virginia	Zip	24450	Country	United States
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Country												
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Applicant Education

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Date of JD/LLB	May 10, 2024
Class Rank	Below 50%
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Journal(s)	Washington and Lee Law Review
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	No
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

ALEXIS SMITH

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June 12, 2023

The Honorable Jamar Walker
United States District Court for Eastern District of Virginia
600 Granby Street
Norfolk, VA 23510

Dear Honorable Judge Walker:

I am a third-year student at Washington and Lee School of Law. I am writing to apply for a position as a judicial clerk in your chambers. Please find enclosed my complete application. Your commitment to ensuring equal and meaningful access to justice for all inspires me, and it would be an honor to clerk in your chambers.

When I enrolled in law school, I was steadfast in pursuing a public interest career that focused on racial and economic justice and the many issues that intersect to achieve justice. Working one-on-one with attorneys at the Legal Aid of West Virginia, I gained firsthand insights on the impact representation can have on the lives of those less fortunate—especially in the public housing context. With AARP Foundation, I have collaborated with a team of lawyers on a number of multijurisdictional class action suits aiming to protect the lives of the aging population. Not only have these experiences prepared me for the deep analysis and detailed-oriented research and writing necessary for a clerkship, but they shaped my thinking of the law. Specifically, the alarming rate in which our justice system punishes poverty—and in turn race—has invigorated my desire to fiercely advocate for the most vulnerable by pursuing a career in civil and human rights. I firmly believe if you want to truly understand the law and how it impacts people, you must get proximate to the administration of justice. This is why I want to clerk in your chambers.

Please let me know if I can provide you with any additional information. I appreciate your time and consideration.

Sincerely,

Alexis B. Smith

Alexis B. Smith

Enclosures

ALEXIS SMITH

203 Myers St. Apt. A, Lexington, VA 24450 • 317-627-7998 • smith.a24@law.wlu.edu

EDUCATION

Washington and Lee University School of Law, Lexington, VA

Juris Doctor Candidate, 2024; Cum. GPA: 3.312; Spring 2023 GPA: 3.692

- Journal: *Washington and Lee Law Review*, Vol. 81 Symposium Editor; Vol. 80 Staffwriter, Tributes Committee Member, Symposium Committee
- Activities: BLSA Treasurer; First Generation Student Union Mentorship Chair; Law Ambassador; OUTLaw; Dean's Student Advisory Group; BARBRI Student Representative

Indiana University, Bloomington, IN

B.A., Criminal Justice; B.A., Psychology, May 2020, GPA: 3.753

- Honors: Hutton Honors College, Dean's List every semester, Founders Scholar, Hutton International Experience Program, Eli Lilly Scholarship
- Activities: Psychology Club, Criminal Justice Association, Recreational Sports (Student Representative), Autism Mentoring Program (Volunteer Mentor)

PROFESSIONAL EXPERIENCE

AARP Foundation, Washington, D.C.

Litigation Intern, Summer 2023

- Anticipated Responsibilities: researching complex legal issues impacting the foundation's membership base; assessing merit of potential cases; drafting a case summary for AARP Foundation SCOTUS Preview
- General Practice Areas: class actions; complex multi-jurisdiction litigation; civil rights and employment law

Research Assistant, Washington and Lee University School of Law

Professor Jill Fraley, Winter 2022–Present

- Researching and compiling relevant materials regarding the historical trends in the use of court packing

Professor Carla Laroche, Summer 2022

- Researched and analyzed trends in case law regarding post incarceration voting rights

Legal Aid of West Virginia (LAWV), Charleston, WV

Intern, Summer 2022

- Researched and drafted complaints, petitions, and letters to clients and opposing parties
- Translated crucial custody law changes to seventh-grade literacy level and updated LAWV Website accordingly
- Interacted with clients, attorneys, and judicial staff via meetings, hearings, and mediations

Golitko & Daly, Indianapolis, IN

Legal Assistant, August 2020–May 2021

- Workers Compensation and Personal Injury firm with twelve employees among three locations across the state
- Assisted with discovery, legal research, and deposition and exhibit preparation

Hopebridge Autism Therapy Center, Carmel, IN

Registered Behavior Technician, May 2021– July 2021

- Identified and documented exhibited behavioral problems with neuro-atypical children ages 1–7
- Collaborated with parents and therapist to create and implement effective behavior modification program

Indiana University: Campus Recreational Sports, Bloomington, IN

Student Worker (~30 hours per week), Fall 2017–May 2020

- Supervised building access, inspected and maintained facility equipment, enforced parking and gym policies
- Prepared daily goals for each shift, allocated assignments to team members, trained new members

INTERESTS

- Backpacking; ethnic cuisine; commercial modeling; bartending; traveling and exploring in Australia

Print Date: 06/09/2023

Page: 1 of 3

Student: Alexis B. Smith

WASHINGTON AND LEE
UNIVERSITY

Lexington, Virginia 24450-2116



SSN: XXX-XX-8438

Entry Date: 08/30/2021

Date of Birth: 04/18/XXXX

Academic Level: Law

2021-2022 Law Fall

08/30/2021 - 12/18/2021

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 109	CIVIL PROCEDURE	B+	4.00	4.00	13.32	
LAW 140	CONTRACTS	B-	4.00	4.00	10.68	
LAW 163	LEGAL RESEARCH	B	0.50	0.50	1.50	
LAW 165	LEGAL WRITING I	B+	2.00	2.00	6.66	
LAW 190	TORTS	B	4.00	4.00	12.00	

Term GPA: 3.045

Totals:

14.50

14.50

44.16

Cumulative GPA: 3.045

Totals:

14.50

14.50

44.16

2021-2022 Law Spring

01/10/2022 - 04/29/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 130	CONSTITUTIONAL LAW	B	4.00	4.00	12.00	
LAW 150	CRIMINAL LAW	B	3.00	3.00	9.00	
LAW 163	LEGAL RESEARCH	B+	0.50	0.50	1.67	
LAW 166	LEGAL WRITING II	B+	2.00	2.00	6.66	
LAW 179	PROPERTY	B+	4.00	4.00	13.32	
LAW 195	TRANSNATIONAL LAW	B-	3.00	3.00	8.01	

Term GPA: 3.070

Totals:

16.50

16.50

50.65

Cumulative GPA: 3.058

Totals:

31.00

31.00

94.82

2021-2022 Law Summer

05/22/2022 - 08/13/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 888	SUMMER INTERNSHIP	CR	1.00	1.00	0.00	

Term GPA: 0.000

Totals:

1.00

1.00

0.00

Cumulative GPA: 3.058

Totals:

32.00

32.00

94.82

Print Date: 06/09/2023

Page: 2 of 3

Student: Alexis B. Smith

WASHINGTON AND LEE
UNIVERSITY

Lexington, Virginia 24450-2116

**2022-2023 Law Fall**

08/29/2022 - 12/19/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 685	Evidence	A-	3.00	3.00	11.01	
LAW 701	Administrative Law	A-	3.00	3.00	11.01	
LAW 708	Financial Literacy For Lawyers	C	1.00	1.00	2.00	
LAW 771	National Security Law and Practice	B	2.00	2.00	6.00	
LAW 846	Veterans Law Practicum	A	4.00	4.00	16.00	
LAW 911	Law Review: 2L	CR	2.00	2.00	0.00	

Term GPA: 3.540**Totals:**

15.00

15.00

46.02

Cumulative GPA: 3.200**Totals:**

47.00

47.00

140.84

2022-2023 Law Spring

01/09/2023 - 04/28/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 690	Professional Responsibility	A	3.00	3.00	12.00	
LAW 705	Remedies	B+	3.00	3.00	9.99	
LAW 767	Electronic Discovery	B+	1.00	1.00	3.33	
LAW 845	Labor and Employment Law Practicum	A-	4.00	4.00	14.68	
LAW 865	Negotiations and Conflict Resolution Practicum	A	2.00	2.00	8.00	
LAW 911	Law Review: 2L	CR	2.00	2.00	0.00	

Term GPA: 3.692**Totals:**

15.00

15.00

48.00

Cumulative GPA: 3.312**Totals:**

62.00

62.00

188.84

2023-2024 Law Fall

08/28/2023 - 12/18/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 700	Federal Jurisdiction and Procedure		3.00	0.00	0.00	
LAW 707L	Skills Immersion: Litigation		2.00	0.00	0.00	
LAW 811	Appellate Advocacy Practicum		4.00	0.00	0.00	
LAW 910	Law Review: 3L		1.00	0.00	0.00	
LAW 942	State Judicial Externship		2.00	0.00	0.00	
LAW 942FP	State Judicial Externship: Field Placement		2.00	0.00	0.00	

Term GPA: 0.000**Totals:**

14.00

0.00

0.00

Cumulative GPA: 3.312**Totals:**

62.00

62.00

188.84

Print Date: 06/09/2023

Page: 3 of 3

Student: Alexis B. Smith

WASHINGTON AND LEE UNIVERSITY

Lexington, Virginia 24450-2116



Law Totals	Credit Att	Credit Earn	Cumulative GPA
Washington & Lee:	62.00	62.00	3.312
External:	0.00	0.00	
Overall:	62.00	62.00	3.312

Program: Law

End of Official Transcript



WASHINGTON AND LEE UNIVERSITY TRANSCRIPT KEY

Founded in 1749 as Augusta Academy, the University has been named, successively, Liberty Hall (1776), Liberty Hall Academy (1782), Washington Academy (1796), Washington College (1813), and The Washington and Lee University (1871). W&L has enjoyed continual accreditation by or membership in the following since the indicated year: The Commission on Colleges of the Southern Association of Colleges and Schools (1895); the Association of American Law Schools (1920); the American Bar Association Council on Legal Education (1923); the Association to Advance Collegiate Schools of Business (1927); the American Chemical Society (1941); the Accrediting Council for Education in Journalism and Mass Communications (1948), and Teacher Education Accreditation Council (2012).

The **basic unit of credit** for the College, the Williams School of Commerce, Economics and Politics, and the School of Law is equivalent to a semester hour.

The **undergraduate calendar** consists of three terms. From 1970-2009: 12 weeks, 12 weeks, and 6 weeks of instructional time, plus exams, from September to June. From 2009 to present: 12 weeks, 12 weeks, and 4 weeks, September to May.

The **law school calendar** consists of two 14-week semesters beginning in August and ending in May.

Official transcripts, printed on blue and white safety paper and bearing the University seal and the University Registrar's signature, are sent directly to individuals, schools or organizations upon the written request of the student or alumnus/a. Those issued directly to the individual involved are stamped "Issued to Student" in red ink. ***In accordance with The Family Educational Rights and Privacy Act of 1974, as amended, the information in this transcript is released on the condition that you permit no third-party access to it without the written consent from the individual whose record it is. If you cannot comply, please return this record.***

Undergraduate

Degrees awarded: Bachelor of Arts in the College (BA); Bachelor of Arts in the Williams School of Commerce, Economics and Politics (BAC); Bachelor of Science (BS); Bachelor of Science with Special Attainments in Commerce (BSC); and Bachelor of Science with Special Attainments in Chemistry (BCH).

Grade	Points	Description
A+	4.00	} Superior.
A	4.00	
A-	3.67	
B+	3.33	} Good.
B	3.00	
B-	2.67	
C+	2.33	} Fair.
C	2.00	
C-	1.67	
D+	1.33	} Marginal.
D	1.00	
D-	0.67	
E	0.00	Conditional failure. Assigned when the student's class average is passing and the final examination grade is F. Equivalent to F in all calculations
F	0.00	Unconditional failure.

Grades not used in calculations:

I	-	Incomplete. Work of the course not completed or final examination deferred for causes beyond the reasonable control of the student.
P	-	Pass. Completion of course taken Pass/Fail with grade of D- or higher.
S, U	-	Satisfactory/Unsatisfactory.
WIP	-	Work-in-Progress.
W, WP, WF	-	Withdrew, Withdrew Passing, Withdrew Failing. Indicate the student's work up to the time the course was dropped or the student withdrew.

Grade prefixes:

R	Indicates an undergraduate course subsequently repeated at W&L (e.g. RC-).
E	Indicates removal of conditional failure (e.g. ED = D). The grade is used in term and cumulative calculations as defined above.

Ungraded credit:

Advanced Placement: includes Advanced Placement Program, International Baccalaureate and departmental advanced standing credits.

Transfer Credit: credit taken elsewhere while not a W&L student or during approved study off campus.

Cumulative Adjustments:

Partial degree credit: Through 2003, students with two or more entrance units in a language received reduced degree credit when enrolled in elementary sequences of that language.

Dean's List: Full-time students with a fall or winter term GPA of at least 3.400 and a cumulative GPA of at least 2.000 and no individual grade below C (2.0). Prior to Fall 1995, the term GPA standard was 3.000.

Honor Roll: Full-time students with a fall or winter term GPA of 3.750. Prior to Fall 1995, the term GPA standard was 3.500.

University Scholars: This special academic program (1985-2012) consisted of one required special seminar each in the humanities, natural sciences and social sciences; and a thesis. All courses and thesis work contributed fully to degree requirements.

Law

Degrees awarded: Juris Doctor (JD) and Master of Laws (LLM)

Numerical	Letter	Grade*	Grade**	Points	Description
4.0	A			4.00	
	A-			3.67	
3.5				3.50	
	B+			3.33	
3.0	B			3.00	
	B-			2.67	
2.5				2.50	
	C+			2.33	
2.0	C			2.00	
	C-			1.67	
1.5				1.50	This grade eliminated after Class of 1990.
	D+			1.33	
1.0	D			1.00	A grade of D or higher in each required course is necessary for graduation.
	D-			0.67	Receipt of D- or F in a required course mandates repeating the course.
0.5				0.50	This grade eliminated after the Class of 1990.
0.0	F			0.00	Receipt of D- or F in a required course mandates repeating the course.

Grades not used in calculations:

-	WIP	-	Work-in-progress. Two-semester course.
I	I	-	Incomplete.
CR	CR	-	Credit-only activity.
P	P	-	Pass. Completion of graded course taken Pass/Not Passing with grade of 2.0 or C or higher. Completion of Pass/Not Passing course or Honors/Pass/Not Passing course with passing grade.
-	H	-	Honors. Top 20% in Honors/Pass/Not Passing courses.
F	-	-	Fail. Given for grade below 2.0 in graded course taken Pass/Fail.
-	NP	-	Not Passing. Given for grade below C in graded course taken Pass/Not Passing. Given for non-passing grade in Pass/Not Passing course or Honors/Pass/Not Passing course.

* Numerical grades given in all courses until Spring 1997 and given in upperclass courses for the Classes of 1998 and 1999 during the 1997-98 academic year.

** Letter grades given to the Class of 2000 beginning Fall 1997 and for all courses beginning Fall 1998.

Cumulative Adjustments:

Law transfer credits - Student's grade-point average is adjusted to reflect prior work at another institution after completing the first year of study at W&L.

Course Numbering Update: Effective Fall 2022, the Law course numbering scheme went from 100-400 level to 500-800 level.

Office of the University Registrar
Washington and Lee University
Lexington, Virginia 24450-2116
phone: 540.458.8455
email: registrar@wlu.edu


University Registrar

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW
LEXINGTON, VA 24450

June 13, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I most enthusiastically recommend Alexis Smith for a judicial clerkship. Alexis is not only an extraordinary student—one of the most talented and gifted advocates that I have had the pleasure to teach or work with—but a great person. Alexis is a truly impressive young professional that possesses a brilliant mind. As background, I have had the privilege to work with Alexis as the Law Review's faculty advisor.

Alexis serves as the symposium editor for the Law Review—a widely respected journal in which an invitation to join only follows after a competitive write-on process. Alexis's selection as the symposium editor is groundbreaking, as she is only the second Black woman to ever serve as an editor on the Law Review. Her work on the Law Review has received high-praise, as one professor emailed me that her editorial work—from substantive suggestions to citations—provided on an article that professor wrote was "the most useful and intentional edits have ever received on a project in two decades as a law professor." That professor would go on to discuss how they could not believe that a law student could so easily grasp the nuance of complex arguments at the intersection of race, constitutional law, and the criminal legal system. More than that, Alexis so deeply understood that article that she provided sharp critiques to the author's thesis and suggested solutions, which, ultimately, lead to that author to restructure and reframe their argument. Alexis did this for every project she was the lead editor. This commitment to excellence comes as no surprise. Alexis possesses a profound ability to understand complex areas of the law and suggest possible solutions. This is precisely the work that law clerks must engage in to provide great counsel to their judges.

Alexis is a gifted thinker and a phenomenal writer. In her Law Review note, which I supervised, Alexis analyzed the U.S. Supreme Court's decision in *Bostock v. Clayton Co.*, 140 S. Ct. 1731, 1754 (2020). As you know, *Bostock* interpreted "sex" under Title VII of the Civil Rights Act to include both sexual orientation and gender identity. While this may seem like a victory in progressive legal circles (and Alexis acknowledges that it is), Alexis cautions readers that future litigation could significantly undermine the Civil Rights Act. Specifically, Alexis examines the majority opinion's pronouncement that the Religious Freedom of Reformation Act is a "super statute" that can supersede Title VII of the Civil Rights Act. This statement in *Bostock* has received little scholarly attention but its implications are significant. Alexis—never afraid of a challenge—unpacks the many overlapping statutory and constitutional dimensions of this aspect of *Bostock*. Alexis also provides clear solutions, including on calling for congressional action. This paper is a tour de force and nothing short of brilliant. Her writing is succinct, powerful, and persuasive. Her research possesses the rigor you would expect from an expert with years of experience in this area of the law. Alexis plans to submit this note to Law Reviews. I have no doubt that it will help courts, advocates, and scholars navigate issues at the intersection of religion and civil rights protections.

As a former law clerk to two judges—the Honorable Roger L. Gregory (4th Cir.) and the Honorable Emmet G. Sullivan (DDC)—I, more than most, understand what is expected of a law clerk: trustworthiness, dependability, and excellence. That is Alexis. Alexis exudes trustworthiness and reliability—she is a real self-starter with an intuitive grasp for what needs to be done and how. Alexis is also a person of integrity, perspective, and balance. Reflective and poised, she is always thinking of how to improve, but she also has mettle, confidence, and great tenacity to tackle difficult and thorny legal questions. Alexis thrives in interpersonal relations, and would mix respectfully with other law clerks and staff. I would trust her with any work product, no matter how sensitive, and have the utmost confidence that she would always conduct herself with dignity and discretion. More importantly, in my opinion, Alexis's compassion and passion separates her from most—she will work tirelessly to ensure that your bench memorandums are well researched and recommend the right result for the right reasons. That is excellence—excellence that she has demonstrated throughout her career at Washington and Lee University School of Law.

In sum, I offer Alexis my most enthusiastic and unreserved recommendation. She will be an amazing law clerk. It is my sincere hope that she has the opportunity and privilege to work for you, Judge.

Please feel free to reach out to me at bbhasbrouck@wlu.edu or 914-443-1324 should you have any questions.

Sincerely,

Brandon Hasbrouck
Associate Professor of Law

Brandon Hasbrouck - bbhasbrouck@wlu.edu



Seeking Justice, Changing Lives

STATEWIDE HEADQUARTERS
922 Quarrier St., 4th Fl.
Charleston, WV 25301
Ph: (304) 343-4481
(800) 642-8279
Fax: (304) 345-5934

June 6, 2023

Timothy Shawn Litten, Esquire
Supervising Attorney, Charleston Office
Legal Aid of West Virginia
922 Quarrier Street, Fourth Floor
Charleston, WV 25301

To Whom It May Concern:

It is my sincere pleasure to recommend Alexis Smith for a clerkship in your chambers.

I am the supervising attorney at Legal Aid of West Virginia's Charleston office. Last summer, I met Alexis when she interned with my office. During her time with Legal Aid, Alexis distinguished herself by timely submitting well-researched and fully developed work products. In my thirteen plus years in practice, I would rank Alexis as one of the best interns I have worked with.

Alexis has excellent communication skills. Her written work is both clear and concise. During her time with Legal Aid, she was tasked with drafting multiple pleadings and memorandums on various subjects. Alexis was highly proficient in analyzing the relevant case law, statutes, and regulations with regards to the relevant facts of a particular case. Further, Alexis demonstrated her oral articulateness in discussing and reviewing her work. She always explained her views and her work product very concisely and gave supporting arguments that were both clear and persuasive. Alexis also demonstrated good teamwork skills in group assignments.

On a personal level, Alexis is a well-disciplined person with a pleasant personality. During her time with Legal Aid of West Virginia, Alexis went well beyond the requirements of her internship, putting in a lot of extra research and time into her projects and case work. Not only was she interested in and motivated to learn the material, but she also put great work into assimilating it to her own experience and developing her own ideas about each legal topic that we discussed.

Alexis is an exceptional candidate for a clerkship position. Her work with Legal Aid of West Virginia shows a desire to give back to her community and the greater legal community. She has proven herself to have the initiative and intellect to complete a high-level clerkship. Thus, I would highly recommend Alexis, as I believe she would be an asset for any judge.

www.lawv.net



If I can be of any further assistance, or provide you with any further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Timothy Litten", with a large, sweeping flourish at the end.

Timothy Shawn Litten, Esquire

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW
LEXINGTON, VA 24450

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am on the faculty at Washington and Lee University School of Law, and am writing to you in enthusiastic support of Alexis Smith, a rising third year law student at W&L who is seeking a clerkship with your court.

Each year I am gratified to be able to write recommendation letters for a number of W&L's excellent students. But my insight into Ms. Smith is deeper than is typical because over the past two years I have come to know her and her work very, very well. I recommend Ms. Smith highly, and absolutely without reservation. I am confident that she will be an asset to any court that has the pleasure of working with her in its chambers.

I have known Ms. Smith since she first started at the law school, and was selected for W&L's BLSA mock trial team, of which I am the faculty coach. Since then, I have had the pleasure of having Ms. Smith in my Fall 2022 Evidence class, I have had her as a guest in my home for the numerous BLSA events which I host, and I have also gotten to know her quite well personally one-on-one. In every aspect of our relationship, Ms. Smith has impressed me deeply.

In terms of her work on the BLSA mock trial team, even though she started out as a 1L, Ms. Smith was a standout. She is whip-smart, extremely hard-working, and very eager to learn. She was never satisfied with the pat answer, shortcut, or easy solution as she researched the legal issues posed by the case and built a case theory and strategy. She was poised, agile, tenacious and extremely effective in all aspects of her trial presentation, from direct, to cross, to motions in limine, to objection colloquy, to arguments. She also worked extremely well with her teammates – she was collaborative, supportive, reliable and very kind. In fact, I could recommend her to any court based on the strength of her work on BLSA mock trial alone.

In terms of her work in my Evidence class, although Ms. Smith received an A- from me, her work was absolutely of A quality. The mandatory curve I was forced to work within meant that I could only award six A's in the course, and Ms. Smith was seventh in the class on points, by the very smallest of margins. I felt strongly enough about Ms. Smith's performance in the course, and the razor-thin margin that separated Ms. Smith from the six other students to whom I awarded A's, that I even petitioned my dean for an exception to the curve to allow me to bump Ms. Smith into the A cohort (unfortunately, my petition was denied).

Ms. Smith was a standout in every aspect of my Evidence class – it was just a matter of a single question on my multiple-choice final exam that made the difference in terms of her grade. In fact, on the written elements of the course – two complex motions in limine involving issues arising under Federal Rules of Evidence 401-404 and 702-703 – Ms. Smith's work placed her among the top two or three students in the course: both motions made excellent use of the -applicable authority, and they extremely well-written. The motions were cogent, creative, well-organized, well-argued, and thorough without sacrificing conciseness. Based on my experience with her work, I am confident that Ms. Smith's writing and analytical skills would serve you well in your chambers.

Moreover, Ms. Smith was also a standout in terms of the aspects of my Evidence course that involved oral communication. Ms. Smith participated very actively in in-class discussion, and was eager to wrestle with challenging issues. In a class that was filled with strong students, Ms. Smith's contributions to in-class discussion stood out, as did her oral arguments on the two motions in limine. Her in-class work (as well as our out-of-class discussions) demonstrated that Ms. Smith is an inquisitive, thorough, creative thinker, and that she is a close reader with very strong analytical skills. Ms. Smith also performed extremely well in her motion in limine oral arguments – she was poised, self-assured and creative, and she did an excellent job engaging with me (as the court) when I pressed her with difficult questions.

On a purely personal level, Ms. Smith is simply a delight. She is bright, engaged and collaborative. She is warm, kind-hearted and possesses a wonderful sense of humor. Ms. Smith is not only a true pleasure to teach and work with, she is a true pleasure to be around.

In sum, I am completely confident that Ms. Smith will bring much to your chambers. I would welcome the opportunity to talk with you regarding Ms. Smith, and I encourage you to contact me with any questions you may have.

Very truly yours,

C. Elizabeth Belmont
Clinical Professor of Law

Elizabeth Belmont - belmontb@wlu.edu

Alexis Smith

ALEXIS SMITH

203 Myers St., Apt. A, Lexington, VA 24450 ▪ smith.a24@law.wlu.edu ▪ (317) 627-7998

Writing Sample

This is an excerpt from my Evidence Course this fall. A fictional client was on trial for murder. I was asked to write motion *in limine* to exclude a collection of evidence. The assignment was meant to further our understanding of the Federal Rules of Evidence regarding character and reputation evidence.

Alexis Smith

IN THE CIRCUIT COURT
OF DARROW COUNTY, NITA

Alexandria Division

THE PEOPLE OF THE STATE OF NITA,)	
)	Case No. CR 2126
v.)	
)	Hon. Beth Belmont
JOE MITCHELL,)	
)	
Defendant.)	

DEFENDANT'S MOTION IN LIMINE TO

EXCLUDE CERTAIN EVIDENCE AND ARGUMENTS

Defendant, Joe Mitchell ("Mitchell"), by and through the undersigned, respectfully moves *in limine* to exclude certain evidence and arguments. More specifically, that evidence and those arguments consist of the following:

- (1) The collective testimony of three of Leslie Thompson's friends (the "Friends' Reputation or Opinion Evidence" and the "Friends' Other Acts Evidence")
- (2) Testimony by Mitchell's ex-girlfriend ("A.B.") regarding Mitchell's alleged violence against A.B. and an alleged confession that took place almost a decade prior to the death of Leslie Thompson (the "A.B. evidence").
- (3) Expert Testimony by Dr. Walsh regarding characteristics of batterers and the kind of conduct they tend to exhibit.

Such evidence and arguments are inadmissible under Rules 403, 404(a), and 404(b) of the Federal Rules of Evidence.

BACKGROUND

The above-captioned matter arises from the murder of Leslie Thompson ("Leslie") that occurred on September 10 YR-2. *See* Indictment, ¶ 2. The State of Nita has charged Defendant, Mitchell, with the crime of Murder in the First Degree. *Id.* The defendant is the husband of the deceased and has pleaded not guilty. *See* Affidavit of Mitchell.

Alexis Smith

I. The Friends' Evidence Must be Excluded Because Neither the Reputation nor the Other Acts Testimony are Admissible Under the Federal Rules of Evidence

The State intends to call three of Leslie's friends (the "Friends") whose collective testimony will include two categories of evidence. First, the Friends claim Mitchell has a reputation for being "hot-tempered" and "controlling" (the "Friends' Reputation Evidence"). Second, the Friends allege that over a span of one year—from the beginning of Mitchell and Leslie's relationship until the day of their wedding on November 15 YR-3—the Friends allegedly witnessed an aggregate of twelve occasions on which Mitchell responded to Leslie asserting independence of thought on a *variety of issues or activities* by becoming "physically threatening" and angrily trying to control Leslie (the "Friends' Other Acts Evidence"). Additionally, the Friends will testify that Mitchell was never physically violent toward Leslie, the couple sought counseling shortly after their wedding (November 15, YR-3), and after the wedding the Friends never witnessed any of the behaviors described prior to the wedding.

A. The Friends' Reputation Evidence is not Admissible Because it is Reputation Evidence and is Barred Under FRE 404(a)

"Fundamental [] has been the rule that character is *never* an issue in a criminal prosecution unless the defendant chooses to make it one." *People V. Zackowitz*, 254 N.Y. 192, at 2 (1930). In general, the use of character evidence is prohibited. *See* FED. R. EVID. 404(a)(2). Because a defendant's liberty is at stake, the *defendant* may introduce evidence of their own character. *See id.* Only when a defendant chooses to open this door may the Prosecution introduce evidence to rebut said character trait. *Id.*

In offering the Friends' Reputation Evidence labeling Mitchell as "hot-tempered" and "controlling," the State is blatantly disregarding Rule 404(a)'s explicit prohibition on this kind of use of character evidence. The only circumstance under which the Government could offer such evidence is in rebuttal should, in his case-in-chief, Mitchell put a pertinent character trait in issue. *See* FED. R. EVID. 404(a)(2). Mitchell does not intend to introduce any evidence of character; thus, there is no permissible avenue for the State to seek the admission of this evidence. Accordingly, Mitchell moves to bar the Friends' Reputation Evidence.

Alexis Smith

B. The Friends' Other Acts Evidence is not Admissible Because it is Propensity Evidence and is Barred under FRE 404(b)

Mitchell also seeks to exclude the Friends' Other Acts Evidence, which consists of the Friends' testimony that Mitchell was physically threatening and controlling of Leslie when she acted contrary to his will. This use of other acts to prove a person's character to show Mitchell's propensity for a particular kind of behavior is prohibited. *See* FED. R. EVID. 404(b)(1).

The Friends' Other Acts Evidence is precisely the sort of propensity evidence barred under Rule 404(b)(1). The Government will likely claim to be offering the Friends' Other Acts evidence as evidence of motive, suggesting that the jury should infer a motive to control, and that Mitchell killed his wife to control her in the most extreme sense. But there is no foundation for this narrative. It is well established that the degree of similarity and the temporal proximity between the other act and the charged crime are vital considerations in determining whether the other acts, regardless of a stated proper purpose, are adequately relevant to the charged conduct. *See U.S. v. Trenkler*, 61 F.3d 45, at 3 (1st Cir. 1995); *U.S. v. Duran-Moreno*, 616 F.Supp.2d 1162, at 4 (D.N.M. 2009). The Friends' Other Acts evidence fails on both counts. First, the behavior in question is vastly dissimilar from the crime that has been charged; controlling and physically threatening behavior without physical violence does not equate to the use of lethal force to kill Leslie. Additionally, the friends admit the alleged behavior stopped for the entire year preceding Leslie's death (Nov. 15 YR-3 and Sept. 10 YR-2). Thus, the Friends Other Acts evidence is also too temporally remote to be relevant to any material fact in this case.

Alternatively, the State may argue that the Friends' Other Acts Evidence escapes the prohibition by Rule 404(b) because it is evidence of a habit under Rule 406. However, courts acknowledge that "habit" evidence is of such persuasive value that it must be met with strict scrutiny to assure that it clearly falls within the reach of 406 and thus escapes the 404(b)-propensity bar. *See Laughan v. Firestone Tire & Rubber Co.*, 749 F.2d 1519, at 3 (11th Cir. 1985). The two controlling considerations for the court's analysis are: (1) the adequacy of the sampling, and (2) uniformity of the response. *Id.* at 1. Ultimately, the court is looking for sufficient examples numerous enough to base an inference of systematic conduct. *Id.*

Alexis Smith

at 4. The Friends' Other Acts Evidence lacks both specificity and similarity to the crime, and it is so temporally remote that it cannot adequately describe a "habit" or behavior that is relevant to the case at hand.

Moreover, even if the court were to find this evidence to be relevant to a non-propensity purpose like motive, or that it constitutes admissible evidence of habit, the danger of unfair prejudice posed by the Friends Other Acts Evidence substantially "outweighs the probative value of the evidence in view of the availability of other facts appropriate for making decision of this kind under Rule 403." FED. R. EVID. 404(b) advisory committee notes to 1972 proposed rules. It is generally accepted that all "bad acts" evidence has some level of danger that the jury will use the evidence not for the permitted narrow purpose, but rather to infer propensity of criminal behavior; simultaneously, outside of the context of propensity, the evidence itself must be viewed for its inflammatory nature. *Trenkler*, at 6.

Considering the absence of a high degree of similarity with the gap in temporal proximity, the admission of such evidence makes the evidence weakly probative of motive at best, and yet the risk that the jury would infer Mitchell's controlling behavior indicates a likelihood he acted similarly in the murder of Leslie is high. Finally, the Government may claim that a limiting instruction would alleviate the significant risk of unfair prejudice posed by the Friends' Other Acts evidence, but both Congress and the Court have recognized that a limiting instruction is often not available nor effective in cases in which there are substantial concerns about 403 prejudices. FED. R. EVID. 105 advisory committee notes to 1972 proposed rules.

Mitchell moves to bar all the Friends' Other Acts Evidence because it is propensity evidence, lacks any proper purpose, and is irrelevant to any material fact in the case. As mentioned above, when there is a substantial risk of prejudice, a limiting instruction cannot adequately eliminate this concern.

Alexis Smith

II. Testimony by A.B. regarding both the alleged violence and statements that took place between them four years prior to Mitchell meeting the Victim are inadmissible Because They Are Other Acts Evidence and Unfairly Prejudicial.

The State also seeks to admit the testimony of Mitchell's ex-girlfriend, A.B., regarding events that occurred six or more years prior to Leslie Mitchell's murder. Like the Friends' Other Acts evidence, the A.B. evidence is other acts propensity evidence that is barred by Rule 404(b). While the Government may claim that the A.B. evidence is also being offered for a non-propensity purpose such as motive, the record reflects this evidence is so temporally remote it bears no relevance to any non-propensity purpose.

As explained in Part I.B of the instant motion, *supra* at p. 4, when analyzing "other acts" evidence being used for a permitted purpose, the Court looks for both a high degree of similarity *and* close temporal proximity in weighing the probative value and relevance of the prior conduct in relation to the charged crime against the risk of unfair prejudice. *Supra* Part I, B. While Mitchell acknowledges that the alleged violent acts by Mitchell against A.B., are more similar to lethal violence than the Friends' Other Acts Evidence, the degree to which A.B.'s alleged conduct is temporally removed from the conduct giving rise to this case is far greater. Here, the alleged violent interactions occurred six years prior (YR-8) to Leslie's death. Similarly, while Mitchell's alleged confession to shooting and killing his previous wife has a higher degree of similarity to the shooting of his second wife, Leslie, this allegedly occurred eight years (YR-10) before Leslie's death. The lack of temporal proximity significantly diminishes whatever probative value the evidence might have to any alleged motive that may be attributed to Leslie Thompson's death over six years later.

For these reasons, even if the court concluded the evidence was relevant to any permitted use, A.B.'s evidence poses too great a risk. Weighing the highly inflammatory nature of the statements and the temporal remoteness, this evidence is even more prejudicial because it may blind the jury to the lack of any evidence of violence against Leslie (the actual victim of this case), and instead encourage them to punish Mitchell based on these alleged prior acts (hitting A.B. or murdering his first wife). The end to be served by presenting these previous acts before the jury was to depict Mitchell as a loose cannon with

Alexis Smith

violent and sexist propensities, who because of those propensities was more likely to kill with the motive of “controlling” independent women who disobeyed him than a man of “irreproachable life and amiable manners.” *See, Trenkler*, at 2. Accordingly, Mitchell moves to bar the State’s A.B. evidence as impermissible propensity evidence.

**III. Expert Testimony Related to the General Cycle of Violence Presented in Domestic Batterers
Absent Some Non-Speculative Evidence of Actual Physical Domestic Abuse by Mitchell
Against the Victim are Not Admissible Because it is More Prejudicial than Probative and
would Mislead the Jury**

The State also seeks to admit the testimony of Dr. Michelle Walsh, a PhD Psychologist with experience working with battering spouses, regarding the character of batterers and the kind of conduct they tend to exhibit. Assuming the court grants Mitchell’s motions on Part I and Part II, then this testimony has no relevance at all. Without any evidence of any form of domestic abuse, testimony regarding the behaviors exhibited by domestic batterers would not illuminate any material fact in the case. Even if one or some portion comes through, the Expert Testimony by Dr. Walsh should still be excluded because it is improper character evidence, not relevant to proper purpose, and far more prejudicial than probative.

The general opposition to character evidence rests on three major points: character evidence is (1) “susceptible of being used for the purpose of suggesting an inference that the person acted on the occasion in question consistently with his character;” (2) “of slight probative value and may be very prejudicial;” and (3) “tends to distract the trier of fact from the main question of what *actually* happened.” *See* FED. R. EVID. 404(a) advisory committee notes to 1972 proposed rules (emphasis added). Here, the evidence is not dealing with the character of Mitchell per se, but rather generalized character traits and behaviors of a class of people of which the State alleges Mitchell belongs, “batterers.” Nonetheless, the concerns regarding character and propensity evidence still apply. This use of character evidence is even more egregious as it concerns taking general information and extrapolating it onto an individual person;

Alexis Smith

without a connection to specific violent behaviors by Mitchell against Leslie, the Expert Testimony lacks any connection to Mitchell himself and should be barred as propensity evidence.

The State may argue that this testimony is being offered to make sure the jury is not confused, but there is no issue on record that requires such testimony. Although the court allowed Dr. Walsh to provide testimony regarding Battered Woman Syndrome in *State v. Dangerous*, the permitted purpose was to protect the victim from the jury *misconstruing* the evidence, not to attack the defendant. *See* 123 NITA 2d. 456, at 1 (2015). Fear of the extreme persuasive effect of character evidence underlies the rationale of Rule 404; when the defendant's liberty is at stake, the Court should caution from stacking the deck further on the side of the State. *See* FED. R. EVID. 404 advisory committee notes to 2006 amendments. The court was very clear that to admit such evidence it must be "to explain a *victim's* behavior." *Id.* at 2 (emphasis added). The Court found that the State sufficiently "showed a pattern of violence and abuse by Dangerous against Victim over a period of years," and that the voluntary return to her abuser implicated the specific behaviors in which Dr. Walsh was an expert in. Further, absent Dr. Walsh's expert testimony, the credibility of the victim, based on the behavior alone, could have been misconstrued to diminish the credibility of the victim's story all together. That is a completely different situation from that before the Court today.

Here, the State has not established any evidence of physical violence by Mitchell against Leslie, rendering expert testimony of a batterer unnecessary as it would not clarify any material fact in the case. There is no risk of jury confusion regarding the general behaviors presented by batterers, if there is nothing connecting Mitchell to the group in the first place. Ultimately, it is highly probable that Dr. Walsh's testimony in this case could cause the jury to infer that the Mitchell conformed to the general behavior of a batterer on this specific instance against this specific victim which is barred by the policy of protecting a defendant's liberty from unfair prejudice that animates Rule 404. *See* FED. R. EVID. 404 advisory committee notes to 1972 proposed rules.

Even if the Court were to find the Expert Testimony was relevant to helping dispel jury confusion, evidence regarding the behavior and cycle of batterers poses too great a risk of misleading the

Alexis Smith

jury into attributing more weight to this remote and generalized evidence than is permissible. There is absolutely no evidence of Mitchell being physically violent against Leslie, and that is the bottom-line. The State cannot use generalized characteristics of a group, under the guise of expert testimony, to circumvent their duty to provide evidence sufficient to prove their case. Thus, with Mitchell's liberty at stake, the court should exclude any and all Expert Testimony regarding the general behaviors of batterers as it is not relevant to any permitted use and would open Mitchell to an increased risk of prejudice.

CONCLUSION

WHEREFORE, the Defendant, Joe Mitchell, respectfully requests that the Court grant its Motion in Limine to Exclude Certain Evidence.

Respectfully submitted,
Alexis B. Smith
Senior Litigation Counsel
State of NITA

By: /s/
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State of NITA
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Applicant Details

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Country
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Applicant Education

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Date of BA/BS **May 2021**
JD/LLB From **University of Southern California Law School**
http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=90513&yr=2009
Date of JD/LLB **May 12, 2024**
Class Rank **10%**
Does the law school have a Law Review/Journal? **Yes**
Law Review/Journal **No**
Moot Court Experience **Yes**
Moot Court Name(s) **Hale Moot Court**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Of the many applications you receive, this is likely the only one to link an applicant's motivation to ice cream. I am a rising third-year law student at the University of Southern California Gould School of Law, and I am excited to submit my application for a clerkship in your chambers from 2024–2025. Before this, however, I grew up working in my family's ice cream shop in a small town in Massachusetts. There, I developed an unshakeable commitment to serving the community, a strong small-business work ethic, and the affability that comes from a small-town store. In law school, I honed these qualities into a passion for collaborative problem solving, and that passion is one of the many reasons why I am applying to clerk for you.

After law school, I have accepted a position in the U.S. Navy JAG Corps. The Navy allows me to defer my service for a clerkship, but the Navy provides no benefit for having clerked. Thus, my motivations for clerking are limited to those benefits that inhere in the clerkship itself. Service, whether in the military or for the judiciary, provides a unique opportunity to devote oneself to causes and work that truly have an impact on people's lives. I recognize the responsibility that comes with this opportunity, and the same commitment to public service that motivated my applications to the Navy also motivates my application and your chambers.

My other principal reason for clerking is my passion for diving into new research problems and writing opportunities. I have taken extra writing courses, including Judicial Opinion Writing, because each opportunity provides a new chance to confront a problem in an unfamiliar area of law. Unfortunately, USC only allows me to participate in either moot court or law review, but I would have pursued the research opportunities in both honors programs if that was allowed. In moot court, I approached the research with so much enthusiasm that my peers voted to award me a service award, and I was selected to run the program next year. I truly care about making sure the work I do is both done well and ultimately useful to others. This enduring aspect of my character will allow me to bring value as a clerk in your chambers.

I want to clerk at a district court because that experience would best prepare me for the Navy. Additionally, I believe that working in a trial court would allow me to engage with all aspects of a case or trial rather than just the issues brought on appeal. Thus, clerking in a district court would make me a more well-rounded and practical attorney. I have no qualms with working long hours on projects I find interesting or important, and I believe clerking provides the opportunity to work on those projects. Above all, however, I want to work alongside passionate people who are also committed to being a part of something bigger than themselves. I would be honored to clerk in your chambers.

Respectfully Submitted,

Graham Smith

Graham Smith

818 S Grand Ave, Apt. 502, Los Angeles CA 90017 | 508-364-3638 | graham.smith.2024@lawmail.usc.edu

EDUCATION

UNIVERSITY OF SOUTHERN CALIFORNIA GOULD SCHOOL OF LAW

Juris Doctor Candidate, May 2024

GPA: 3.87 (Top 10% after 1L year = 3.76; current Class Rank forthcoming)

Honors: Hale Moot Court Honors Program

- Participant: Quarterfinalist, Outstanding Service Award Winner, Outstanding Oral Advocate Winner
- Chair: 2023–2024

Highest Grade: Constitutional Law; Modern US Supreme Court

Leadership: Student Bar Association, Academic Affairs Chair; Public Interest Law Foundation, Public Donations Co-Chair; First Generation Professionals, Academic Affairs Chair

Pro Bono: International Refugee Assistance Program, Shining Light Volunteer; National Lawyers Guild, Homeless Citation Clinic Volunteer

COLLEGE OF THE HOLY CROSS

Bachelor of Arts with Honors, History, Political Science, *summa cum laude*, May 2021

GPA: 3.87

Honors: Dean's List; Honors Program; Phi Alpha Theta

Honors Thesis: “*The Failure of the Corwin Amendment and Article V*”

Activities: Ultimate Frisbee, Captain; Moot Court, Captain

EXPERIENCE

US Attorney’s Office for the Central District of California

Extern, Criminal Division

Los Angeles, CA
(Commencing Fall 2023)

Sullivan & Cromwell LLP

Summer Associate

Los Angeles, CA
May 2023 – Present

- Drafted legal writing on a variety of complex issues on accelerated timeline
- Researched issues including state secrets doctrine and corporate control of electronically stored information

USC International Human Rights Clinic

Law Student Clinician

Los Angeles, CA
August 2022 – May 2023

- Advocated for a neglected humanitarian crisis before the ICC’s Office of the Prosecutor
- Led a team that authored report identifying crimes against humanity in Cameroon

USC Gould School of Law

Research Assistant and Teaching Assistant for Professor Ariela Gross

Los Angeles, CA
Summer 2022 – May 2023

US Navy JAG Corps

Summer Intern, Code 46 Appellate Government

Washington, DC
Summer 2022

- Drafted briefs on behalf of the United States to be submitted to Armed Forces Courts of Criminal Appeals
- Prepared attorneys for oral arguments through moot courts
- Researched issues in ongoing litigation such as government searches of cellphone location data

Smitty’s Homemade Ice Cream

Manager, Scooper

Barnstable, MA
June 2013 – 2022

COMMUNITY INVOLVEMENT

Cape and Islands Veterans Outreach Center, *Volunteer and Organizer*, Hyannis MA

May 2021

Boy Scouts of America, Troop 77, *Eagle Scout*, Brewster MA

July 2017

UNIVERSITY OF SOUTHERN CALIFORNIA

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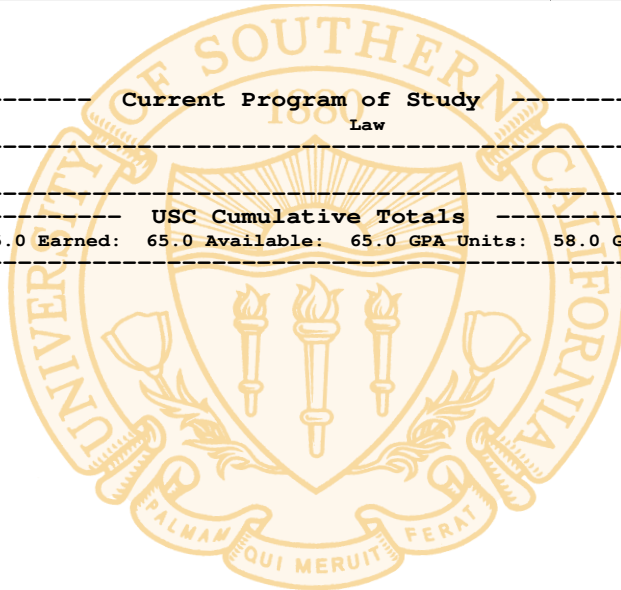
Frank Chang
Registrar

Current Program of Study
Law

02/15/2021 Juris Doctor

USC Cumulative Totals

Law Units Attempted: 65.0 Earned: 65.0 Available: 65.0 GPA Units: 58.0 Grade Points: 224.50 GPA: 3.87



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Fall Semester 2021 (08-23-2021 to 12-15-2021)

LAW-530	CR	1.0	Fundamental Business Principles
LAW-515	3.6	3.0	Legal Research, Writing, and Advocacy I
LAW-503	4.2	4.0	Contracts
LAW-509	3.9	4.0	Torts I
LAW-502	3.5	4.0	Procedure I

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
16.0	16.0	15.0	57.20	3.81

Spring Semester 2022 (01-10-2022 to 05-13-2022)

LAW-531	3.6	3.0	Ethical Issues for Nonprofit, Government and Criminal Lawyer
LAW-516	3.7	2.0	Legal Research, Writing, and Advocacy II
LAW-504	3.8	3.0	Criminal Law
LAW-508	4.2	3.0	Constitutional Law: Structure
LAW-507	3.8	4.0	Property

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
15.0	15.0	15.0	57.40	3.82

Fall Semester 2022 (08-22-2022 to 12-14-2022)

LAW-873	3.9	3.0	Judicial Opinion Writing
LAW-603	4.0	4.0	Business Organizations
LAW-532	3.8	3.0	Constitutional Law: Rights
LAW-849	CR	5.0	International Human Rights Clinic I
LAW-667	3.5	2.0	Hale Moot Court Brief

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
17.0	17.0	12.0	46.10	3.84

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write with great pride and enthusiasm in support of the application by USC Gould School of Law 2024 J.D. candidate Graham Smith for a clerkship in your chambers. I taught Mr. Smith in Gould's required first-year Constitutional Law course (focusing on structural issues) in spring 2022 and our required upper-year Constitutional Law course (focusing on rights issues). He is an excellent student, thoughtful and mature, and deeply engaged in the educational process. He would make an outstanding judicial clerk, and I highly commend him to you.

I first met Graham Smith when he was assigned to my section of Constitutional Law: Structure in his 1L year. Our class met in person (after the first couple post-break weeks of Zoom), masked for most of the semester, but my office hours were conducted via Zoom. Although I cold-call, I also address a lot of questions to the class at large for volunteers to answer. Mr. Smith proved up to both forms of challenge and quickly established himself as one of my most regular volunteers, even on occasions when he was more tentative in his thoughts. This to me was a sign that he really was there to learn, not just to get face time or curry favor by speaking up just on things like simple verifiable details from the readings. He was one of the three students who most regularly attended office hours, where he frequently just wanted to confirm his understanding of the material – something I recommend students do. Mr. Smith also earned the respect of his classmates, being chosen by a large team of them to present mini-oral arguments in class on their behalf, arguing that the state of Texas had standing to sue the federal government asserting injury to the state's citizens from a federal mask and vaccine mandate. He acquitted himself and vindicated their trust admirably, drawing on (and sometimes distinguishing) relevant case law and responding quickly and appropriately to questions from classmates and me. He also was the only student brave enough that term to volunteer a sample answer to a past year's more "thematic" essay question for me to address (anonymously) in the review session for the course, again underscoring his genuine desire to learn the material as best he could even at the potential for personal embarrassment along the way. That kind of growth mindset is deeply admirable.

I was then pleased but not surprised when Mr. Smith earned the highest grade I awarded in the class, 4.2/A+. His answer to an essay question asking students to analyze the significance of a scholarly view of congressional powers based on a reading of certain historical material we read synthesized a wide range of material we had studied about the scope of Congress's various constitutional powers. He carefully advanced arguments for which areas would be more and which less affected while identifying tensions between federal efficiency on the one hand and checks on the federal government and state policy experimentation on the other. His answer to a fact-pattern question involving a hypothetical federal law protecting transgender members of the National Guard paid close attention to the facts specified and to differences among various congressional powers and their attendant implications for federalism. He also did a terrific job on a hard set of (closed-book) multiple-choice questions designed to test understanding of a very broad range of the material covered in the course.

Mr. Smith's performance in Constitutional Law: Rights in fall 2022 was also terrific; in a class with heavy representation of third-year students, he tied for the third highest grade I awarded, an A/3.8. (The curve for this class ended up not including as high scores as did his first, Constitutional Law: Structure course with me.) As an experiment, I broke from my usual practice of cold-calling on students, instead relying wholly on volunteers. Mr. Smith was the single most willing and definitely the most sophisticated in his answers throughout the semester. He thoughtfully explored potential tensions between broadly worded parts of the Constitution's text and evidence of narrower historical expectations for such text. He emphasized what he views as the importance of moral candor on the part of the Supreme Court in particular. He thoughtfully criticized potentially overbroad readings of the Court's broad holding that under the Constitution the law cannot "give effect to" private prejudices. All of this contributed immensely to our class discussions. And while some of his classmates with a year more experience with law school writing earned higher grades in the course, Mr. Smith's essay answer regarding the potential implications of the Supreme Court's Dobbs decision overruling Roe v. Wade for rights of access to contraceptives thoughtfully articulated arguments on each side of the question before settling on his recommendation – which also creatively offered the Justice for whom he was hypothetically clerking the option of ducking the merits issues in the suits. Moreover, he achieved the highest score on the (again, closed-book) multiple choice questions, further demonstrating his mastery of the broad swath of precedent and doctrine covered in the course.

I have had the privilege of teaching at the USC Gould School of Law for decades, and Graham Smith ranks among my finest students. His GPA puts him comfortably in the top tenth of his class, and he has achieved that while being significantly involved in leadership positions on campus and extensive pro bono service. Everything I have seen of his character, including his treatment of students with whose arguments he may disagree, commends him as an impressive candidate for the US Navy JAG Corps, which he will be joining after law school and any clerkship. His experience in Gould's immigration clinic and his time in summer 2023 at Sullivan & Cromwell will go far toward ensuring he enters a post-graduation judicial clerkship with terrific skills. Graham Smith is intelligent, honorable, and driven and will be a credit to Gould and to the legal profession. As a former federal (appellate) clerk myself (for the late Hon. Edward R. Becker), I do not see how you could go wrong selecting Mr. Smith for a clerkship, and I unreservedly recommend that you do so.

All best regards,

David Cruz - dcruz@law.usc.edu - 213-740-2551

David B. Cruz

David Cruz - dcruz@law.usc.edu - 213-740-2551

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to give my strong support for Mr. Graham Smith's application to clerk in your Chambers. I have known Graham since April 2022 when I reviewed his application for enrollment in the International Human Rights Clinic at the University of Southern California ("USC") Gould School of Law, which I direct. He was one of nine students invited to participate in the Clinic for two semesters in the 2022-23 academic year after a competitive interview and application process. During his time in the Clinic as a student attorney thus far, he has worked on average 15-20 hours per week.

In the Clinic, I have supervised Graham on a matter bringing attention to the unfolding atrocity situation in the Anglophone regions of Cameroon since 2017 resulting in around 6,000 deaths and nearly 100,000 refugees. In the fall semester, Graham worked closely with two other Clinic student attorneys to prepare for a briefing with the prosecutor's office of the International Criminal Court ("ICC") in The Hague, The Netherlands, on a 200-page communique submitted by the Clinic alleging perpetration of crimes against humanity by government officials against the civilian population and calling for an investigation into the situation. A communique is akin to a legal brief and requires that the team convince the prosecutor that there is a "reasonable basis" under the legal test established in the Court's Statute for initiating a preliminary examination and eventually an official investigation into the alleged international crimes taking place in Cameroon. As such, the team had to argue persuasively that the factual situation of serious human rights violations against the Anglophone minority populations in Cameroon amounts to the definitions of persecution, deportation and other inhumane acts as crimes against humanity under international law. They also had to demonstrate how the Court has jurisdiction over this situation even though Cameroon is a non-States Party to the ICC, and that the situation rises to the requisite level of gravity warranting outside intervention. In addition, this project required Graham and his teammates to lobby government officials and nongovernmental organizations attending the Assembly of States Parties meeting of the International Criminal Court in The Hague to support the communique. Finally, Graham and his teammates drafted a concept note for organization of a distinguished panel side event to the Assembly of States Parties' meeting, alleging that the situation in Cameroon, like those in Ukraine and Armenia, presently constitute pre-genocidal situations triggering the duty to prevent genocide under the 1948 Genocide Convention.

Having worked closely with Graham on his Clinic assignments, and having clerked myself on the 11th Circuit U.S. Court of Appeals, I can say that he would be a solid law clerk. First, Graham is quite intelligent and is a quick learner. This became evident not only from his work product, but also from my discussions with him in our seminar class and supervision meetings. His questions and comments were always on point as we discussed the assigned reading and how to apply the law to the circumstances of a particular case. I have been particularly struck at how quickly Graham has grasped complex legal issues in areas of law that are completely new to him. For example, one of my very first tasks for Graham was to research and analyze whether the conflict situation factually meets the definition of an "armed conflict" under international law. Not only did he identify the correct caselaw and legal test for the definition of a non-international armed conflict, but he also identified the main weakness for labeling the conflict in Cameroon such due to the lack of organization of armed non-State actors.

Second, Graham has strong research and writing skills. He quickly grasps complex issues and turns around a solid draft efficiently and effectively. His organizational and time management skills stand out. While he is quick in his research and drafting, one area of growth for Graham in the Clinic has been in learning to be more thorough with his research and polished in his very first drafts by proactively reaching out to ask for further direction where the tasking assignment wasn't clear to him. With some direct feedback and guidance on his first drafts, which he incorporated well, his writing became even more organized, consistent and clear.

Finally, Graham has displayed a hard work ethic and always completes his Clinic work in a timely, professional manner. Over the course of the year, he has learned to pay more attention to detail and not let even the smallest things fall through the cracks. As a result of all of the above, Graham has stood out in my Clinic, easily among the top 10%, and I expect to award him an A at the end of this spring semester (for our Clinics, the first semester is graded CR/D/F).

On a more personal level, Graham is a confident young man with a quick sense of humor who is sensitive to the needs of others. In his work, I have found that Graham is utterly dependable and responsible. He takes initiative and is not afraid of challenges. That being said, he is also a team player. In the Clinic, the team reviews each other's research and drafting, maintain the case files, and lead seminar classes together on their casework. Graham's teammates have noted that he is easy to work with and always ready and willing to help. He is proactive in taking on work, plays a natural leadership role, and reliably follows through on his tasks.

For these reasons, I highly recommend Graham as a clerk in your Chambers. If you need any further information about him, please do not hesitate to write or call.

Best Regards,

Hannah Garry

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June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am submitting this letter of recommendation to convey my enthusiastic and unqualified recommendation of Graham Smith as a clerk in your chambers.

Graham is a second-year student at the USC Gould School of Law. I got to know Graham a bit the summer before he matriculated at Gould. Dean Andrew Guzman and I co-taught a summer reading course on "Law and Leadership" to a group of sixteen incoming USC Gould law students. Graham was part of that group. In that setting, we discussed the joy and challenges of leadership, looking at specific situations and probing students as to how they would approach the problems that we posed. Our goal was not to have them come to any specific decision, but rather to gain appreciation of the various factors that a leader has to consider. We encouraged the students to reflect on their own experiences working for others, and attempt to start to build up their own mental inventory of what makes an effective leader and, equally important, what makes someone an ineffective leader. Graham was an active and engaged participant in these discussions. There was no credit for taking the course, and the course was on Zoom, and it would have been easy to slack every now and then. Graham never did. Indeed, he even participated via Zoom from a parking lot as he was making his way across the country to Los Angeles.

By luck of the draw, Graham ended in my section of Contracts in the fall 2021 semester. Once again, Graham impressed me along a number of dimensions. He was an active and engaged participant in class. He was unfailingly prepared, eager to participate, and thoughtful in his questions. He is the type of student I enjoy having in class because he makes the learning environment better for everyone. He also was facilitator of relationships among his classmates. I often would see him engage with his peers, and it was apparent that he was forming strong relationships across the class. A measure of the respect that his colleagues have for him is that they selected him to be the representative from his section to USC Gould's Student Bar Association.

Graham continued to excel when it came to the final exam. If anything, he exceeded my high expectations. He received a grade of 4.2 – an A+ – and was just a tick behind the top grade of 4.3. His essay exam demonstrated that he has mastered the basic skills that we strive to impart to first-year law students. He not only identified the major issues, but he articulated the competing arguments on either side. He also demonstrated strong organizational skill in structuring his response. While no one is a competent lawyer after one year of law school, Graham was about as far along as one could be at this point in the learning process.

Graham spent the summer after his first year as an intern with Navy JAG. I was a lawyer with the Civil Appellate Section of the Department of Justice prior to entering teaching. In that capacity, I gained a deep admiration for JAG attorneys and the crucial work they do for our country. I recommended Graham enthusiastically for the position, knowing that he had both the analytical abilities and personal integrity that being a member of JAG requires. I was pleased when he was chosen. I was even more pleased when I learned that he decided to begin his career with the Army JAG. I recommended him, again enthusiastically and without reservations, for that position as well. I am thrilled that they extended him an offer, and he will be joining them after law school (and, I hope, after clerking!).

One final piece of information. Perhaps the most challenging clinic for our students to be admitted is our International Human Rights Clinic. The demand for slots always exceeds supply, usually by a factor of five or more. My colleague who directs the clinic looks for students that have both exceptional analytical ability and integrity and commitment. She talks about the candidates with faculty members who have taught the students who are applying. That she selected Graham is a testament to the fact that he has earned the respect of those (like me) who have had the privilege of having him in class.

Putting all this together, Graham is a thoughtful young man of great talent, integrity and promise. He inspires trust and confidence in those he interacts with, both his professors and his classmates. He would an outstanding law clerk.

Sincerely,

Robert K. Rasmussen

Robert Rasmussen - rasmussen@law.usc.edu - 213-740-6473

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2022
No. 20-303

UNITED STATES,	Petitioner,
	-v.-
JAMES ROBERTSON,	Respondent.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE UNITED STATES

BRIEF FOR PETITIONER

Participant 121
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QUESTIONS PRESENTED

- I. Did the district court correctly dismiss a defendant's motion to withdraw a guilty plea because the Sixth Amendment right to counsel had not attached during preindictment plea negotiations?
- II. If a defendant's right to effective assistance of counsel had attached, did the district court correctly dismiss defendant's motion to withdraw a guilty plea because the attorney's conduct met objective standards of reasonableness and did not prejudice the defendant?

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	ii
TABLE OF AUTHORITIES.....	v
OPINIONS BELOW.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF FACTS.....	4
SUMMARY OF ARGUMENT.....	9
ARGUMENT.....	11
I. THE DISTRICT COURT PROPERLY DENIED ROBERTSON’S MOTION TO WITHDRAW HIS GUILTY PLEA BECAUSE A BRIGHT-LINE RULE IS THE PROPER STANDARD FOR DETERMINING HIS RIGHT TO COUNSEL HAD NOT ATTACHED.....	11
A. Standard of Review	12
B. The Court Should Enforce a Bright-line Rule that the Right to Counsel Does Not Attach Until Formal Criminal Charging Proceedings Because the Sixth Amendment’s Purpose and Text Limit Its Application to Protect the Accused During Criminal Proceedings, the Parties Have Not Become Adversarial Before a Formal Proceeding, and this Rule Provides Clear Guidance to the States.....	12
1. <u>The Bright-Line Rule Properly Reflects the Purpose and Text of the Sixth Amendment by Ensuring the Protection of an Accused During Criminal Proceedings and Trial.....</u>	13
2. <u>The Bright-Line Rule Accurately Identifies the Filing of Proceedings as the Point at Which the Prosecution’s case Solidifies, the Parties Become Adversarial, and Defendants Require Counsel.....</u>	15
3. <u>A Bright-Line Rule Provides Clear and Actionable Guidance for the States That Rely on this Rule.....</u>	17

C.	Robertson's Sixth Amendment Right to Counsel Did Not Attach During His Preindictment Plea Negotiations Because the Negotiations Came Before Formal Charges.....	18
II.	EVEN IF ROBERTSON'S SIXTH AMENDMENT RIGHTS ATTACHED, THE DISTRICT COURT CORRECTLY DISMISSED THE MOTION BECAUSE COUNSEL'S ERRORS DID NOT CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL.....	21
A.	Standard of Review.....	21
B.	Chen's Representation of Defendant Was Not Deficient Given That She Adequately Informed Him of the Benefits of the Potential Plea Agreement and Her Concerns.....	22
C.	Even if Chen's Actions Were Ineffective, Robertson Was Not Prejudiced by the Acts of Counsel Because He Maintained Innocence at the Time of the Negotiation and the Agreement is Too Indefinite to Show That the Agreement Would be Accepted.....	23
1.	<u>Robertson Cannot Prove That He Would Have Accepted the Offer Because He Was Maintaining His Innocence and the Offer Was Ambiguous</u>	24
	CONCLUSION.....	26

TABLE OF AUTHORITIES

<u>Burt v. Titlow,</u> 571 U.S. 12 (2013)	22, 23
<u>Chandler v. United States,</u> 218 F.3d 1305 (11th Cir. 2000)	22
<u>Counselman v. Hitchcock,</u> 142 U.S. 547 (1892)	14
<u>Escobedo v. Illinois,</u> 378 U.S. 478 (1964)	11
<u>Gideon v. Wainwright,</u> 372 U.S. 335 (1963)	17
<u>Johnson v. New Jersey,</u> 384 U.S. 719 (1966)	11
<u>Kirby v. Illinois,</u> 406 U.S. 682 (1972)	13, 15, 18
<u>Lafler v. Cooper,</u> 566 U.S. 156 (2012)	24
<u>Libretti v. Unites States,</u> 516 U.S. 29 (1995)	22
<u>Merzbacher v. Shearin,</u> 706 F.3d 356 (4th Cir. 2013)	24, 25
<u>Missouri v. Frye,</u> 566 U.S. 134 (2012)	passim
<u>Moran v. Burbine,</u> 475 U.S. 412 (1986)	13, 14, 15, 18
<u>Padilla v. Kentucky,</u> 559 U.S. 356 (2010)	21
<u>Roberts v. Maine,</u> 48 F.3d 1287 (7th Cir. 1995)	19, 20
<u>Rothgery v. Gillespie County,</u> 554 U.S. 191 (2008)	passim

<u>Strickland v. Washington,</u> 466 U.S. 668 (1984)	21
<u>United States v. Conroy,</u> 567 F.3d 174 (5th Cir. 2009)	12, 21
<u>United States v. Ash,</u> 413 U.S. 300 (1973)	13
<u>United States v. Day,</u> 969 F.3d. 39 (3rd Cir. 1992)	24
<u>United States v. Gouveia,</u> 467 U.S. 180 (1984)	passim
<u>United States v. Hayes,</u> 231 F.3d 663 (9th Cir. 2000)	12, 16
<u>United States v. Larkin,</u> 978 F.2d 964 (7th Cir. 1992)	13, 19
<u>United States v. Hayes,</u> 231 F.3d 663 (9th Cir. 2000)	18, 19
<u>United States v. Moody,</u> 206 F.3d 609 (6th Cir. 2000)	12, 18
<u>United States v. Turner,</u> 885 F.3d 949 (6th Cir. 2018)	13

Statutes

18 U.S.C. § 1956(a)	1, 3
18 U.S.C. § 1956(h)	1, 4
26 U.S.C. § 7201	1, 4, 7
Cal. Penal Code §858(a) (2022)	17

Constitutional Provisions

U.S. Const. amend. V	3, 14
U.S. Const. amend. VI	3, 11, 14

Miscellaneous

Fed. R. Crim. P. 11..... passim

OPINIONS BELOW

On February 3, 2020, Assistant United States Attorney (AUSA) Carli Zimelman opened a grand jury investigation into James Robertson. R. at 24. On June 9, 2021 as a part of this investigation, the government obtained a search warrant for Robertson's home at 300 Pacific Street. R. at 24. The search was executed June 10, 2021. R. at 49.

Following the execution of the search warrant, Robertson was arrested and arraigned in the United States District Court for the District of Gould on June 11. R. at 13. On June 20, a grand jury indicted Robertson on the charges of conspiracy to commit money laundering, in violation of 18 U.S.C.

§§ 1956(a)(1)(B)(i) and 1956(h); seven counts of money laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i); and two counts of tax evasion, in violation of 26 U.S.C. § 7201.

Id.

On July 7, Robertson filed a motion to suppress all evidence obtained by the use of an advanced pole camera including the fruits of the June 10 search. R. at 31. On July 23, the district court denied Defendant's motion to suppress evidence. R. at 25-37.

On July 30, Robertson entered into a plea agreement with the prosecutors in which he agreed to plead guilty to one charge of conspiracy to commit money laundering, in violation of 18

U.S.C. §§ 1956(a)(1)(B)(i) and 1956(h), and one charge of tax evasion, in violation of 26 U.S.C. § 7201. R. at 39.

On August 10, Robertson filed a motion to withdraw his guilty plea pursuant to Fed. R. Crim. P. 11(d)(2)(B) alleging that he received ineffective assistance of counsel during preindictment plea negotiations. R. at 65. On August 20, the district court denied Robertson's motion to withdraw his guilty plea. R. at 69. The district court held that the Robertson's right to counsel did not attach during the preindictment plea negotiations because those negotiations took place before any "formal criminal proceedings." R. at 66-69. The district court also concluded that Robertson could not show ineffective assistance of counsel because his attorney's conduct was not deficient, and Robertson was not prejudiced by the representation. Id.

On August 1, 2022 the United States Court of Appeals for the Twelfth Circuit vacated the ruling of the district court and remanded for further factfinding. R. at 93. On the first issue, the Twelfth Circuit held that the warrantless use of the advanced pole camera for an extended period constituted an unconstitutional search under the Fourth Amendment. R. at 80-86. On the second issue, the Twelfth Circuit found that Robertson's Sixth Amendment right to counsel attached during

preindictment plea negotiations, and his attorney's actions constituted ineffective assistance of counsel. R. at 86-93.

This Court granted Robertson's petition for certiorari to resolve two questions. R. at 94. First, did the district court correctly deny a defendant's motion to suppress evidence based on a finding that the government did not violate the defendant's Fourth Amendment rights by using a "military-grade" camera mounted on a utility pole to record events occurring in and around the defendant's residence for a period of twenty-two months without first securing a warrant authorizing the use of that camera? Id. Second, did the district court correctly deny a defendant's motion to withdraw a guilty plea pursuant to Fed. R. Crim. P. 11(d)(2)(B) based on a finding that the defendant's Sixth Amendment right to the effective assistance of counsel had not attached during preindictment plea negotiations? Id.

CONSTITUTIONAL AND STATUTORY OPINIONS INVOLVED

U.S. Const. amend. V, in relevant part

" . . . nor shall any person . . . be compelled in any criminal case to be a witness against himself"

U.S. Const. amend. VI, in relevant part

"In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."

18 U.S.C. § 1956(a)(1)(B)(i)

"Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial